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The Mediator's Taxonomy of People in Mediation

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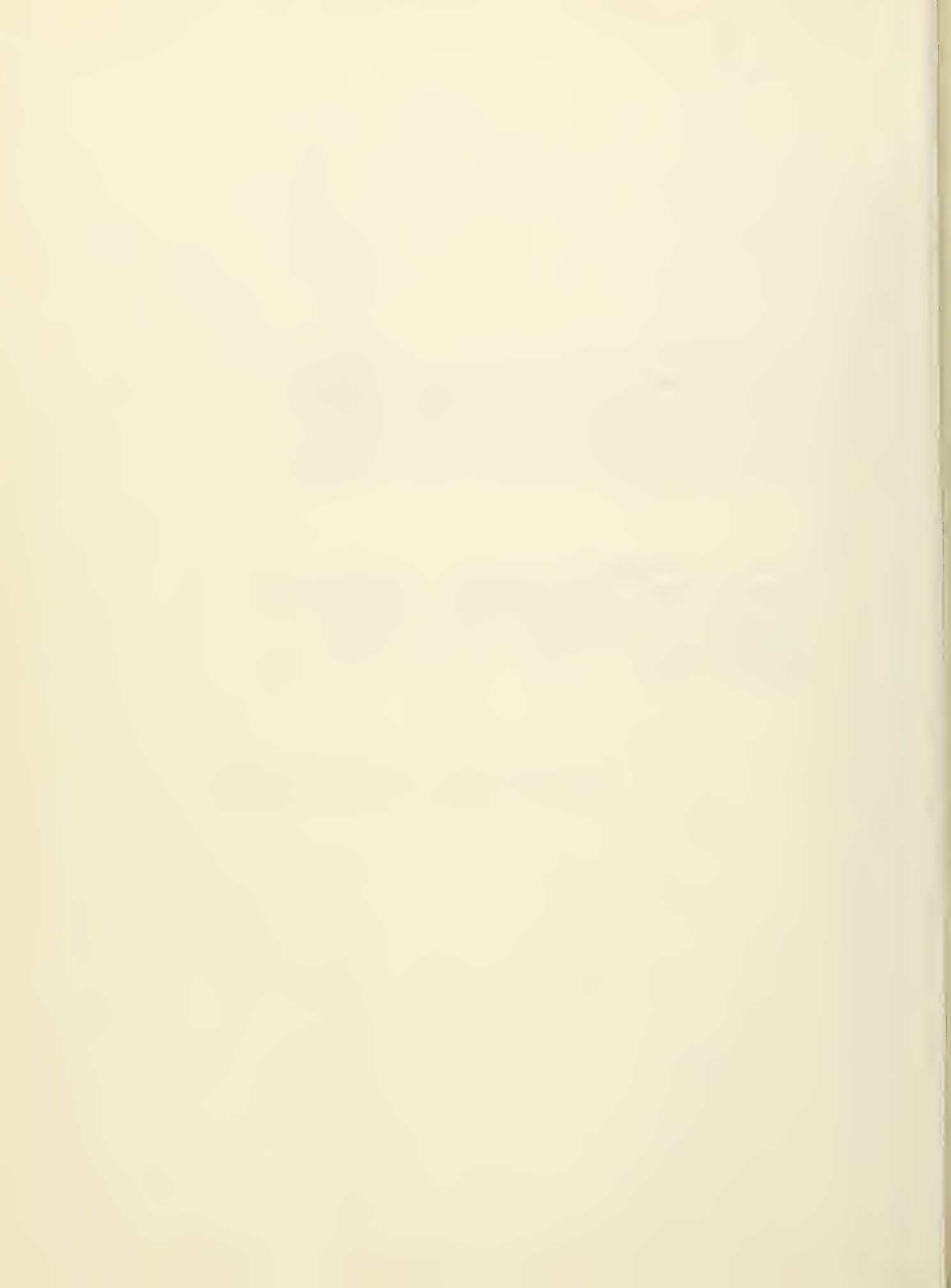
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It's difficult to generalize and say something is typical. There are similar mediations. Many are very similar. Although the problems are similar that is not to say that they get outlined in a similar way. The people are different. Although you may get the same decision you get there by a different route.

People are different. Even if the issues are the same, the people make it different. The basics that we go through may be similar but the process is anything but a stereotype. You can have wages, pensions, health and welfare and seniority but it's never the same.

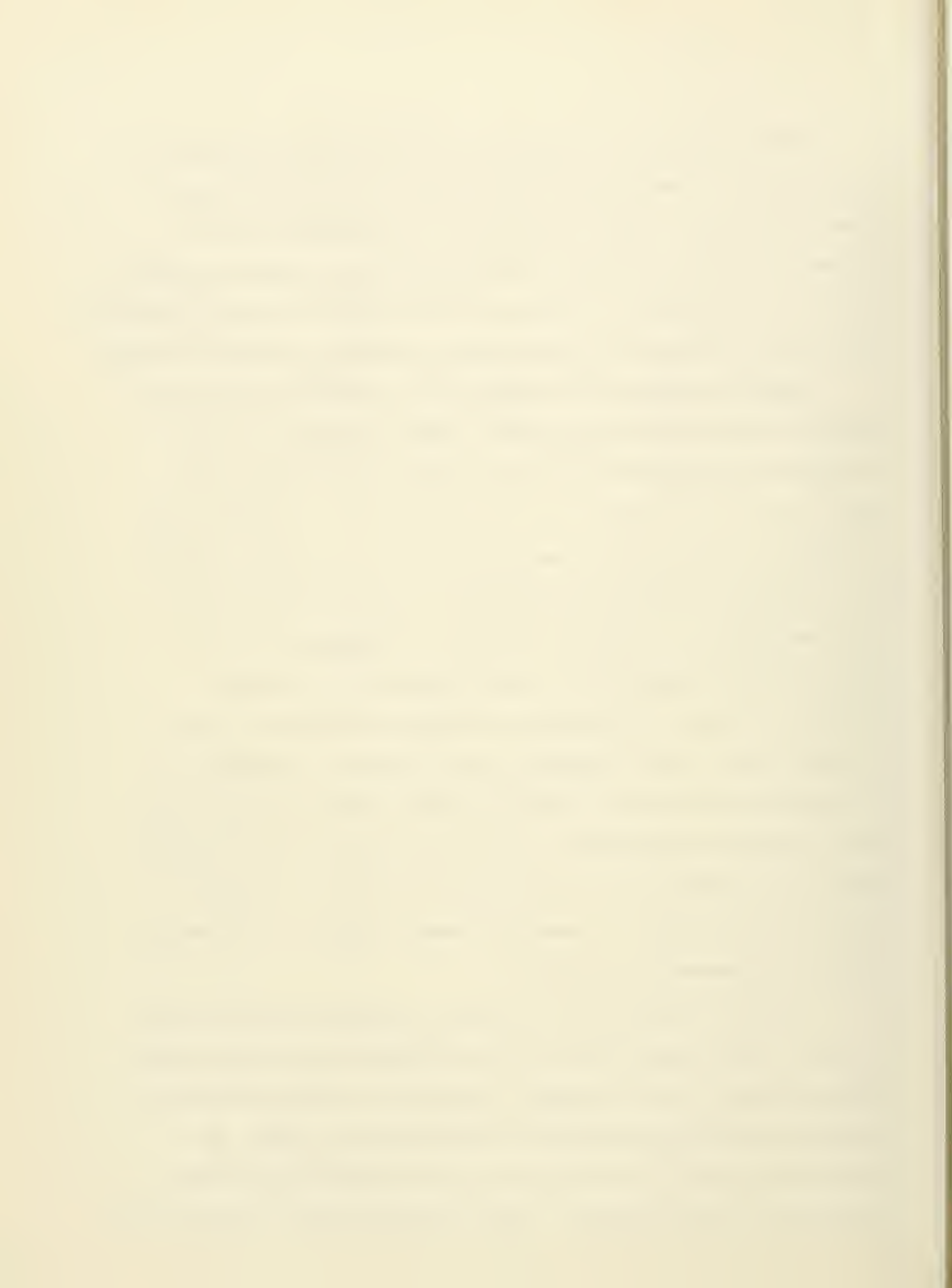
Comments from two different mediators



Labor mediation is an integral part of collective bargaining in the United States. Mediators are actively involved in some 14-15 thousand cases yearly(Simkin, 1971), assisting union and management to reach agreement when their own bilateral negotiations fail to produce a contract. Despite its widespread use, we know very little about the process of mediation, specifically how mediators actually assist the parties in reaching agreement.

Mediation has been, and continues to be, one of the least studied fields in labor relations.(Rehmus,1965) Rehmus attributes this dearth of analysis to the view that practicing mediators have of their work, namely, that it is a personal art, heavily dependent on individual style. In addition, mediators claim that each case has its own unique problems and the mediator's behavior is, therefore, tailored to fit the distinct characteristics of a given case. This view of mediation as an art has made analysis and generalization across mediators and cases very difficult. If one is to understand the dynamics of mediation, one must be guided by this view of mediation as an art and seek to elaborate the art, which means in essence, to see the process of mediation through the eyes of the practicing mediator. Only by understanding how the mediators organize and interpret their own experience in cases can one begin to understand their behavior, because their behavior depends on how they've defined or interpreted the situation.

Where other researchers have sought to categorize mediation cases in terms of such factors as issue types and bargaining environment,among others(Kochan,197) or by the"gamng" aspects of a case,(Stevens,1965), interviews with practicing mediators revealed that the people the mediator works with in a case may be one of the dominant ways mediators organize their case experience.¹ People and their behavior in mediation are



important aspects of the case that the mediator notes and tries to make sense of. Mediators' behavior, the strategies they use in mediation, is guided in large part, by the kinds of people with whom they are working. Training for new mediators, largely done by apprenticeship, is claimed by mediators as the best way to learn about the people and is given as the rationale for this type of training.

When mediators speak about "people" in mediation, they are referring to the spokesmen for the parties. Mediators label these people in terms of their labor relations experience, that is, their familiarity with the workings of collective bargaining and mediation. Along this dimension, professionals are distinguished from inexperienced people. In any given geographical area, the members of the labor relations community tends to know one another by having worked together on cases or by reputation. So when a mediator is assigned a case, before actually becoming involved in meetings, he knows the kinds of people he'll be working with in terms of their labor relations experience. Based on a person's experience, the mediator expects certain kinds of behavior in the case. Hence the distinctions made at the outset of a case based on experience become more complex as people are labelled in terms of what they do or how they behave once into the case.

To understand why the kinds of people the mediators work with is so important, one must consider how the mediators define their role in mediation and the basic procedures they use to attempt to get a settlement. The interviews revealed that mediators see themselves as problem solvers who want to concentrate on the issues and suggest



solutions to the dispute that the parties were unable to generate on their own. The mediators' labels for people reflect the degree to which different kinds of people facilitate or hamper the problem solving process.

I. What is Mediation and Who Mediates

A. What it is.

Webster's New Collegiate Dictionary(1974) defines mediation as "the intervention between conflicting parties to promote reconciliation, settlement or compromise." In practice, mediation can range anywhere from a passive presence, more of a conciliator's role to a very active role of recommending solutions for settlement, more like a factfinder. (Simkin, 1971) The mediator's goal is to help the parties develop for themselves contract terms "they can live with." To achieve this end, they may use a range of techniques including channelling communications, pacing negotiations, exerting pressure for settlement, using persuasion and reason.(See Simkin, 1971; International Labor Office,1973;)

B. Who Mediates?

Mediators are drawn from a variety of sources. They may be full time employees of government agencies or ad hoc mediators appointed by these government agencies or by the parties themselves. The largest government service is the Federal Mediation and Conciliation Service (FMCS) established in 1947 as an independent agency to mediate and conciliate disputes arising in industries engaged in interstate commerce and for employees in the Federal government. Under the 1974 ammendments to the Taft-Hartley Act, FMCS also covers hospitals and other health institutions. The FMCS maintains seven regional offices employing some 300 mediators.(Robins and Denenberg,1976)



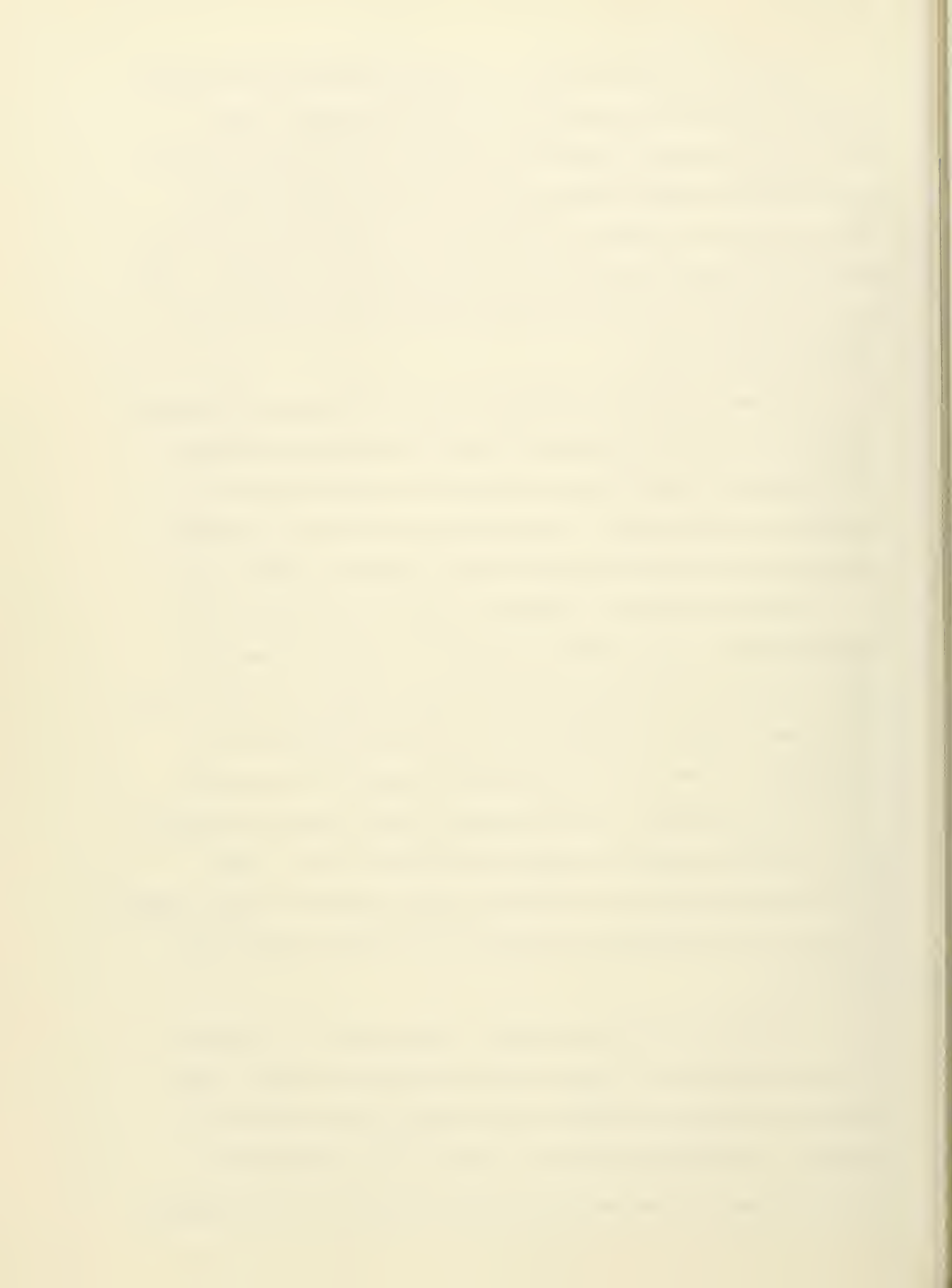
Also at the federal level, the National Mediation Board provides mediation services for the railroad and airline industry. At the state and local level, 18 states and several cities, notably New York have mediation services, employing one or more full time mediators.. ✓ The state and local agencies provide mediation services for industries not covered in interstate commerce and for public sector disputes. However, the FMCS is becoming increasingly more active in public sector disputes.(Simkin, 1971)

To meet the increasing demand for private mediators, the American Arbitration Association established a Center for Dispute Settlement which maintains a list of private mediators for disputes in both the public and private sectors. Some industries retain private mediators that are not selected from an established organization.(Simkin ,1971)

Mediators working for government agencies are assigned cases a certain number of days, usually 30, prior to the contract expiration date. At various intervals during the 30 days, the mediator will contact the parties to offer his services and find out how negotiations are progressing. If the parties have reached an impasse and request the services of the mediator, he will schedule a joint meeting and at that point the mediator becomes actively involved in the case. Ad hoc private mediators are usually contacted when the negotiations have reached an impasse and thus become involved only at the joint meeting stage.

III. Methodology

This paper is in the true sense a working paper. It represents the exploratory stage of thesis research which has as its goal, understanding the dynamics of mediation, particularly, the strategies of mediators. This exploratory stage consisted of 10 interviews with practicing mediators and two observations of mediations. Five mediators



were employed by a regional office of FMCS. Four mediators work for a state agency of conciliation. One of the interviews and one of the observations were with ad hoc private mediators.

The goal of these interviews was to enable mediators to describe some of their cases. Questions about easy and difficult mediations were intended to facilitate this description. Questions about training new mediators and the qualities of good and bad mediators were intended to elicit from the mediators what they thought mediators really had to know to be good at their jobs.

IV. People in Mediation Cases

The interviews with practicing mediators revealed that if one is to understand a mediator's behavior in mediation, one must first understand how the mediator views the people he works with. The mediators were unanimous in their claim that their behavior in a case depended, in large part, on the kinds of people involved, primarily the chief spokesman on each side. The reason "people" are so important to mediators, relates to the role they see themselves playing in mediation, that of a problem solver.

III.A. The Problem Solving Procedure Used by Mediators

"Now that Kheel is able to move into negotiations virtually on his own motion, he has developed a relatively standard procedure for mediation."
(New Yorker, "Profile", June, 1968)

Mediators define their role in mediation as that of problem solver. The essence of the problem solving role is that mediators by working with the parties can fully explore the issues in dispute and attempt to generate a compromise package that meets the needs of both sides. In order to get a compromise, the mediator obviously requires the



cooperation of the parties. This cooperation is required in different forms in various phases of the mediation.

At the outset, when the mediator is called into the case, the standard practice described by the mediators was to call the parties together in joint session to define the issues.

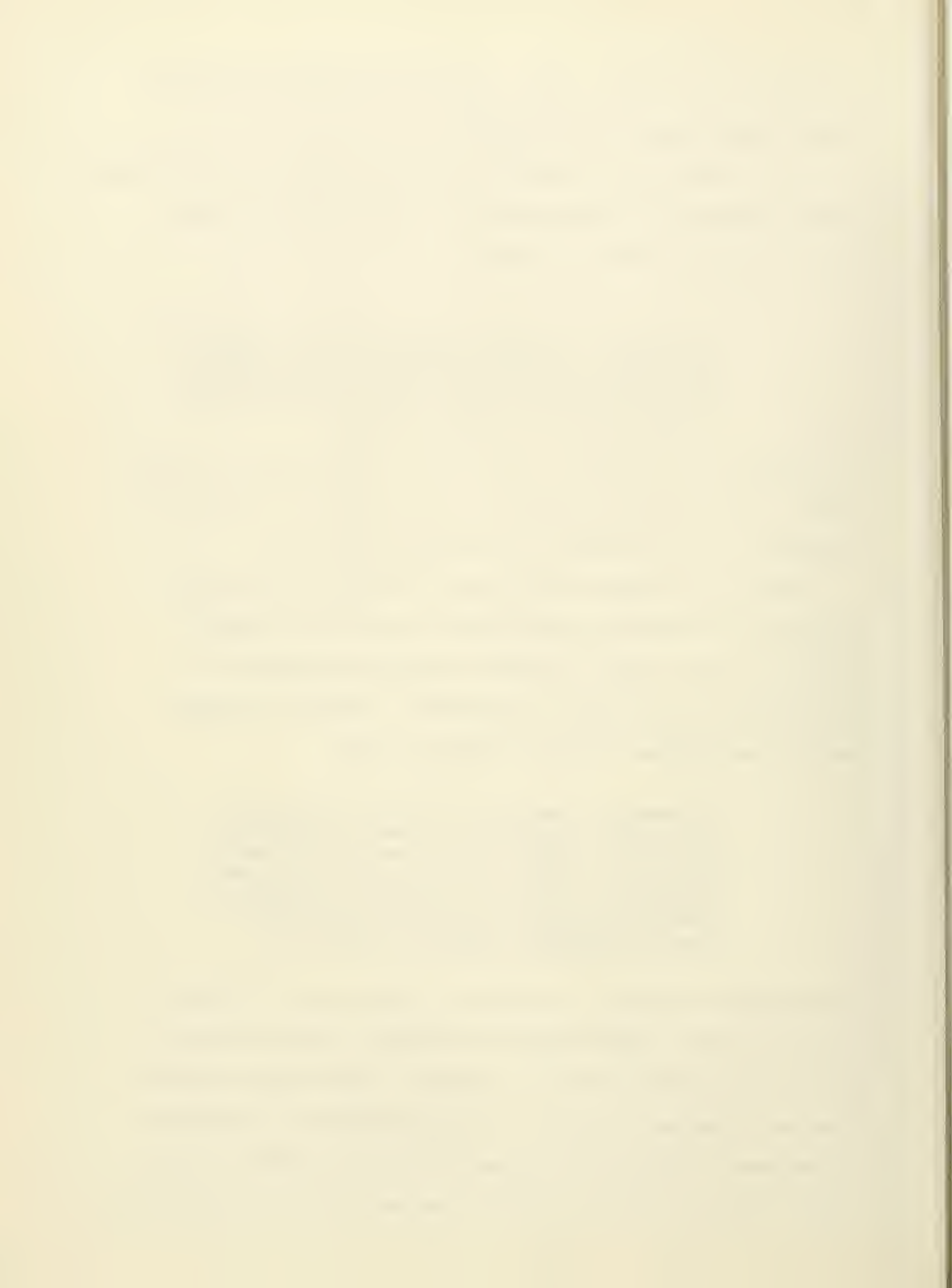
At the outset you need a clear, accurate statement of the issues. I bring the parties together to agree on where to disagree. I'm not interested in settling at this point, but want to get a clear concise statement. "We must agree about where to disagree".

To accomplish this definition of the areas of disagreement, the mediator requires that each party be unified in its own objectives, that there is a consensus on each side about what the demands really are.

After the joint session has produced a consensus on the issues in dispute, the mediators usually break the parties into separate caucuses. At this stage, the mediator attempts to determine the priorities each side considers most important. Ideally the mediator wants to know precisely where the sides will settle.

The essence of mediation is getting information... The dirtiest question you can ask in bargaining is what will you settle for? If you ask that question you ought to resign, but that's the question you must have an answer to. You get it by asking every question except that. What's left over is the answer. (New Yorker, "Profile," June, 1968)

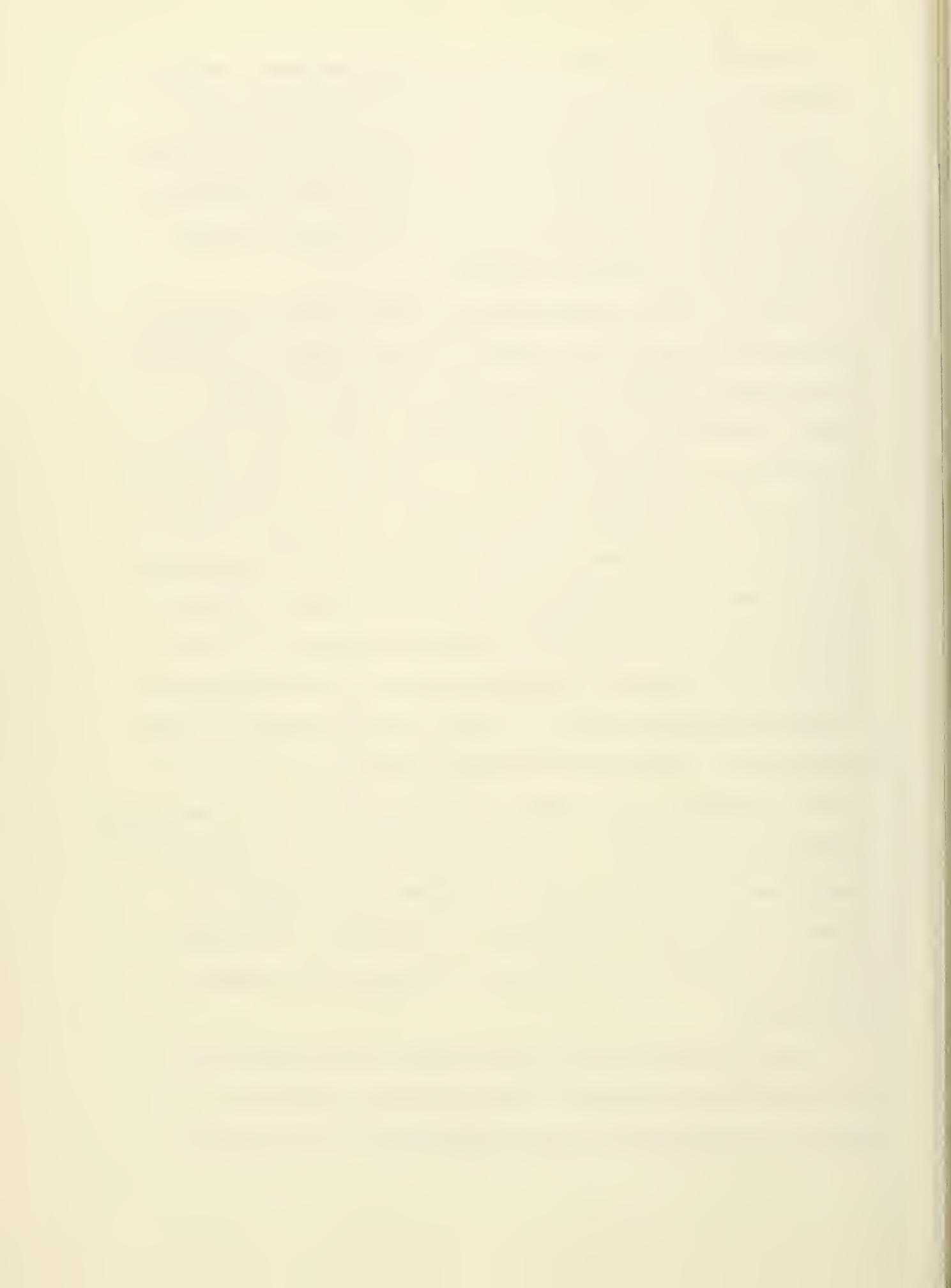
In these private caucuses, the mediator is trying to get a "handle", a starting point to suggest possible compromises. Often the mediator will work with spokesmen from each committee. These spokesmen may be labor and/or management attorneys. Or the spokesmen may, on the side of management be Industrial Relations or Personnel directors. On the side of the union, it may be a staff representative from the International



or State office of the union, or the local union president. Some times meetings with spokesmen are "off the record", that is, discussion of information or possible compromises are considered tentative and can be dropped at any time. In this phase of mediation, where the mediators are trying to get a handle on the situation, they require at least some degree of open sharing of information.

After the initial groundwork has been laid, the issues have been defined and the mediator has a sense of what the parties want, the real work of mediation starts. This real work is getting a "package" moving. A package is a series of compromises and tradeoffs that has the parties stepping back from their last positions. It is getting the "dance toward settlement" going--the movement of "I'll give this if you'll give that." Movement requires 1) that the parties understand the process, understand that they have to give up some things. They must accept the fact that they can't get everything they want. 2) It also requires that the parties are willing and able to "sensibly discuss the issues and their ramifications". At this stage the mediator may suggest possible options and alternatives based on the information about the parties' priorities. His arguments reflect knowledge of other settlements, industry and area patterns. As part of this discussion of alternatives, demands may be recast into dollar terms to make the tradeoffs more salient to the parties. In this phase of the mediation, the mediator requires the cooperation of the people in exploring these possible alternatives.

Finally, movement of the package requires that the parties have the flexibility to compromise. Having flexibility means that the parties at the table and/or their representatives have the autonomy



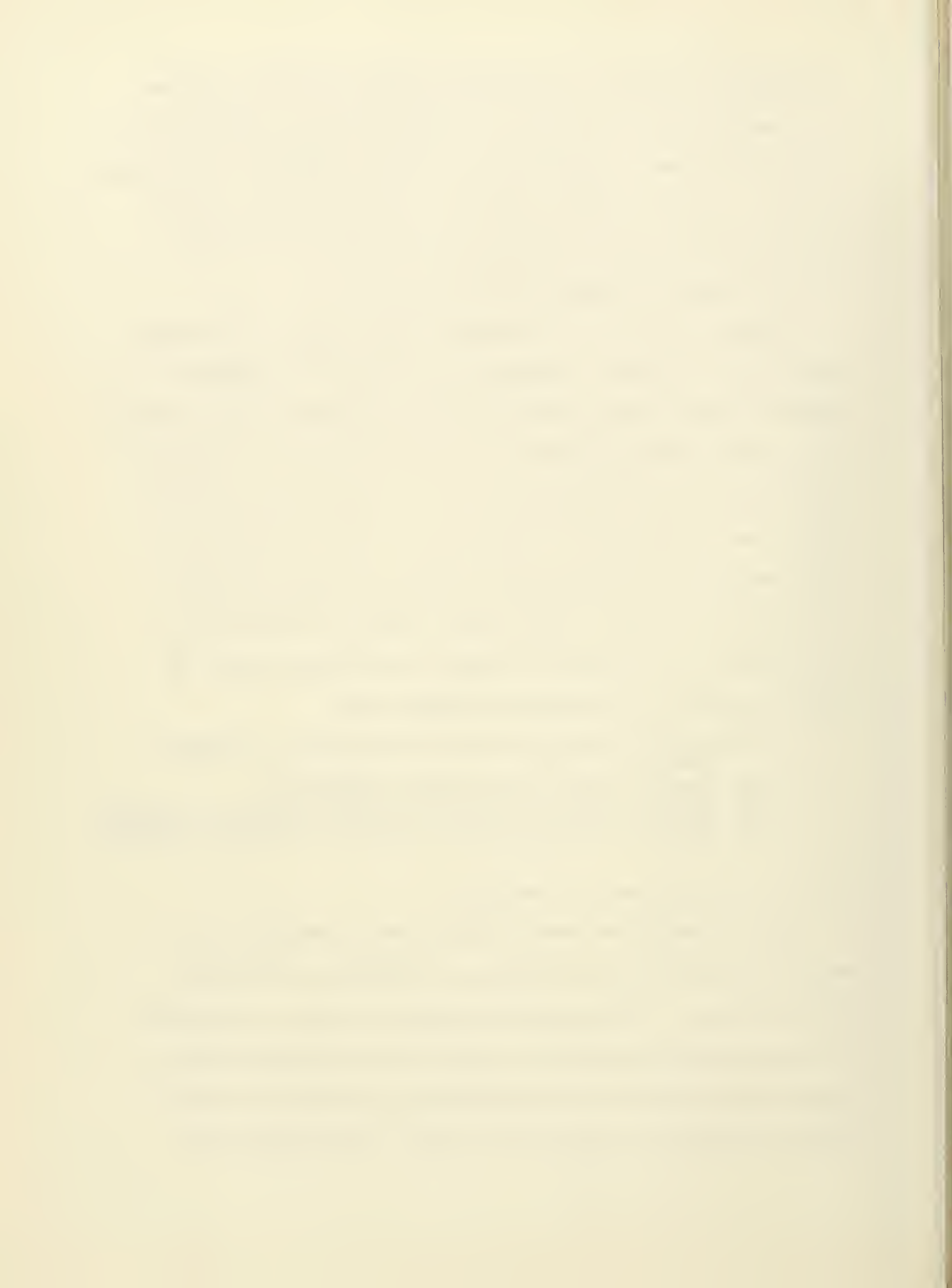
to meaningfully negotiate a compromise settlement. This autonomy can be constrained by the hierarchy of the organization--the corporate office and executive branch of government on the side of management and the International or State office on the side of the union. On both sides, political considerations in terms of constituencies can limit the autonomy and hence the flexibility of the people.

Through the basics of this procedure, the mediator may make recommendations to each side, suggesting possible areas of compromise. "Mediation permits you to introduce novel and innovative ways of looking at the problem that neither party had thought of." When the mediators classify people, the classification reflects the degree to which the mediator can "problem solve" on the issues. That is, what kinds of people facilitate the problem solving procedure, allow the mediator to "zero in on the issues" and what types inhibit or interfere with this zeroing in. When mediators describe these various people, the criteria are based on the procedure described here.

1. The degree to which people have their positions and demands defined;
2. The degree to which the people share information;
3. The degree to which the people can "sensibly discuss the issues";
4. The degree to which the people are able and willing to compromise.

III.B. Who are the People in Mediation?

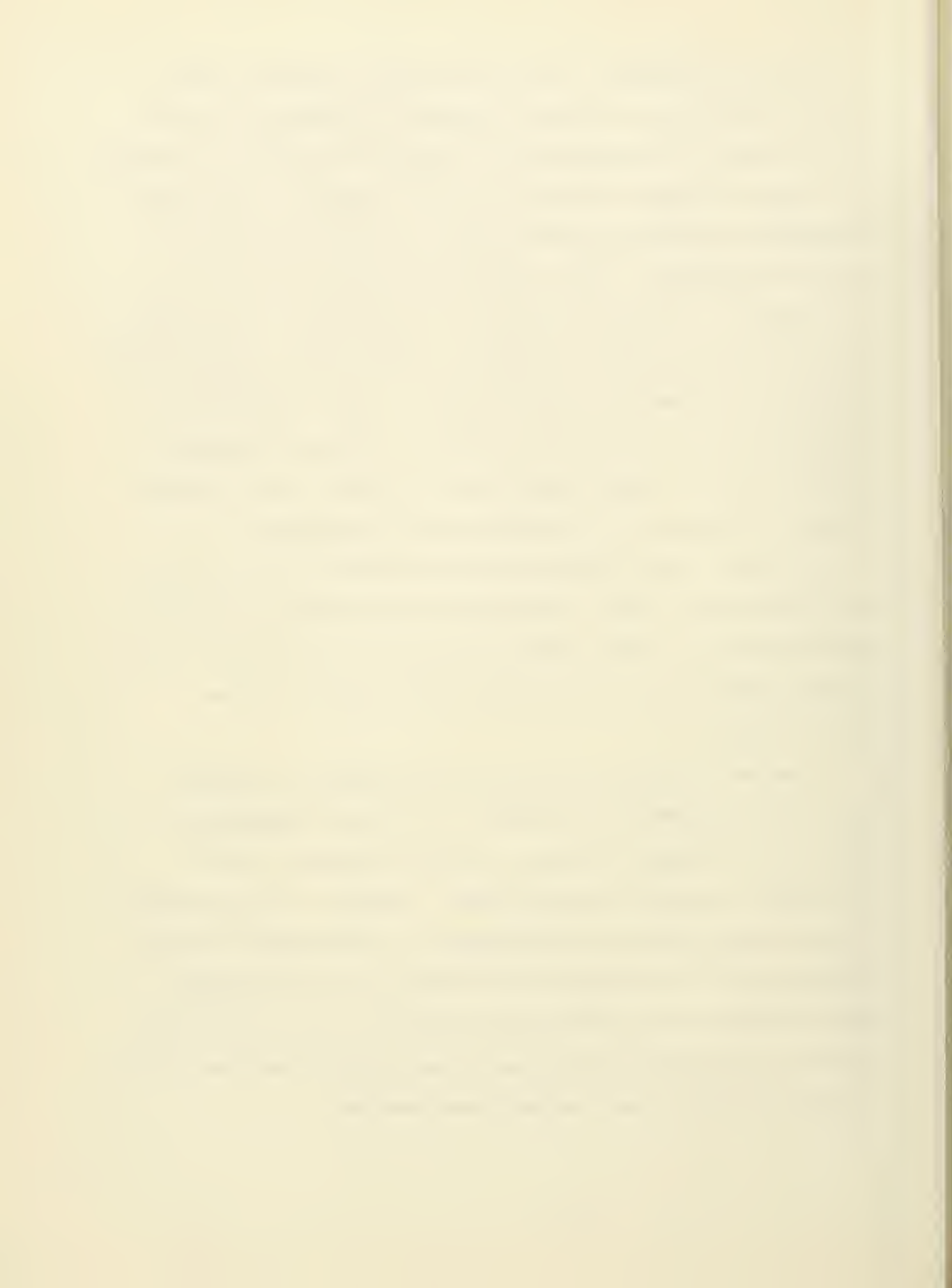
Before analyzing the labels mediators have for "people", it is useful to delineate who these people are in mediation, who actually sits at the table. The bargaining committees for labor and management are representatives, appointed or elected by their respective sides. These representatives have been negotiating on the issues in dispute before the mediator is called into the case. In the public sector,



on the side of management, the bargaining team is composed of various members of the executive branch of government, representatives from the mayor's office, or a personnel board, responsible for collective bargaining. In the case of teachers it would be the school committee. Public sector management committees are political; they are directly elected or are political appointments. Often these bodies have an attorney who acts as spokesman. In the private sector, where a local union is negotiating with a local plant, the local personnel director and /or the plant manager will, in all likelihood, be on the committee. Where a corporation is negotiating for all of its plants, usually the director of industrial relations and other members from the executive will be on the committee. Again, an attorney may be a spokesman for private management.

On the union side, usually the elected officials of the local union, the president, shop steward, along with other union members representing diverse interests or crafts within the unit, are on the committee. Usually a representative from an International and/or State office of the union is present.

Often much of the actual negotiating and mediating is conducted by the chief spokesman of the committee. In the case of management, this may be a management attorney, or the chief spokesman could be the company's industrial relations officer. Similarly on the union side, a labor attorney may be the chief spokesman. A representative from the International or State office of the union may be the chief spokesman. These spokesmen, who are outside the bargaining unit, for the most part take their instructions from the rest of the bargaining committee, who are in turn responsive to their own local constituencies.



III.C. Taxonomy of people in Mediation

The interviews revealed that mediators classify "people" along two different, but related dimensions, experience and actual behavior during the case. The case assignment received by mediators identifies the chief representatives for both sides. In preliminary telephone conversations, prior to the first joint meeting, the mediator has likely spoken to these representatives, be they attorneys, union representatives or industrial relations officers, about the progress of the bilateral negotiations. In a given geographical area, the mediator knows personally, or by reputation or by seeking information from peers, the background and experience of these representatives. Mediators have expectations about these "people" and their likely behavior in a case based on the kinds of experience the spokesmen have had with collective bargaining and especially mediation. (See Figure I)

Whether somebody is a "Pro" or an "inexperienced" person is information the mediator has prior to entering the case. Labelling a person a "Pro" or a "Hard Hat" conveys the expected behavior mediators have of that person in terms of the four requirements for the problem solving procedure. During the mediation, people will engage in behaviors that are specific to one or more of the problem solving requirements and that inhibit or facilitate that stage of the process. Mediators label "people" in terms of their specific conduct at various stages. For example, labelling somebody a "rag picker" or a "closer" is salient only for the last stage, the flexibility and ability to compromise to get an agreement. Figure II identifies the categories mediators use to describe people in terms of their specific behavior.

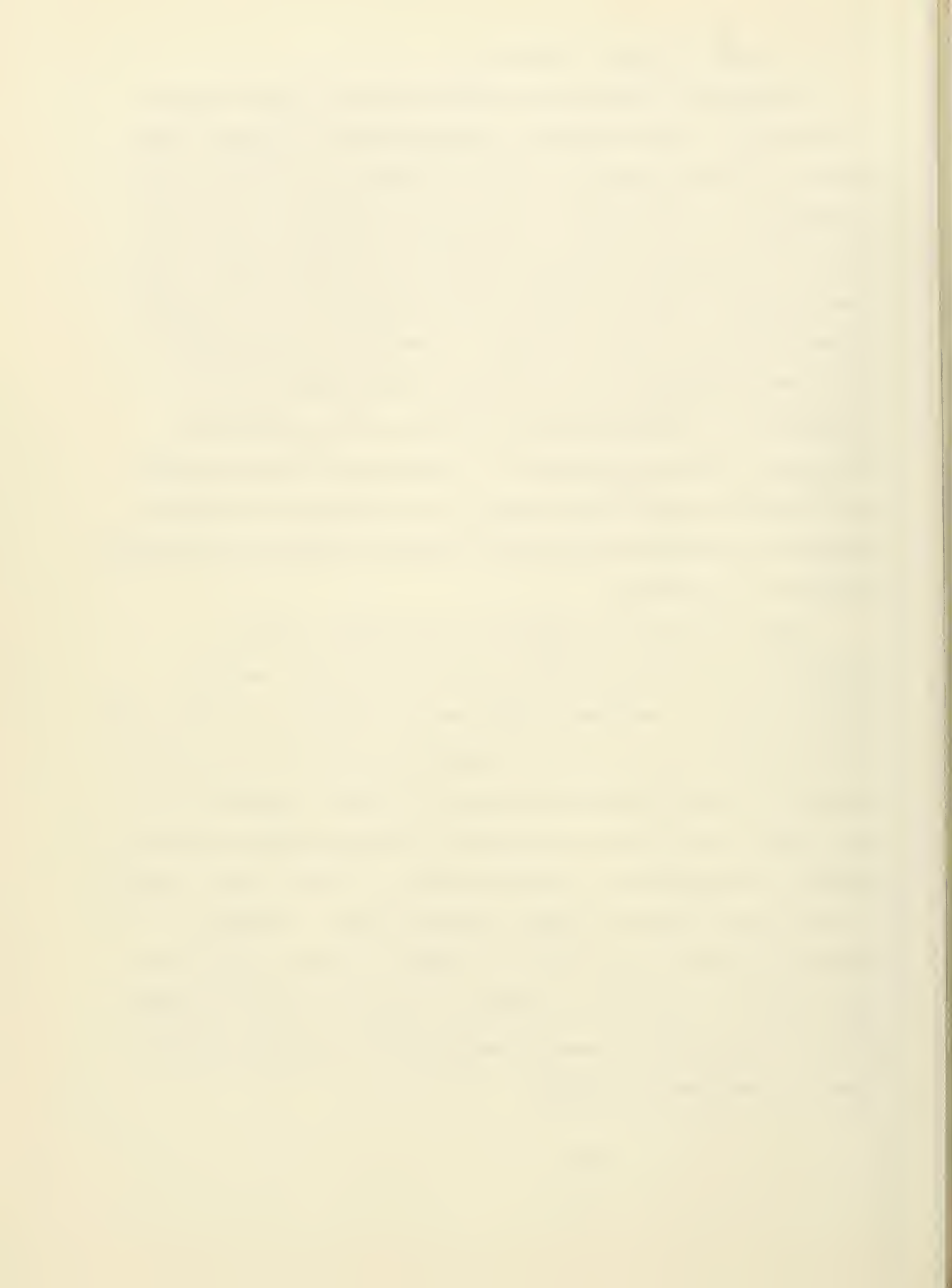
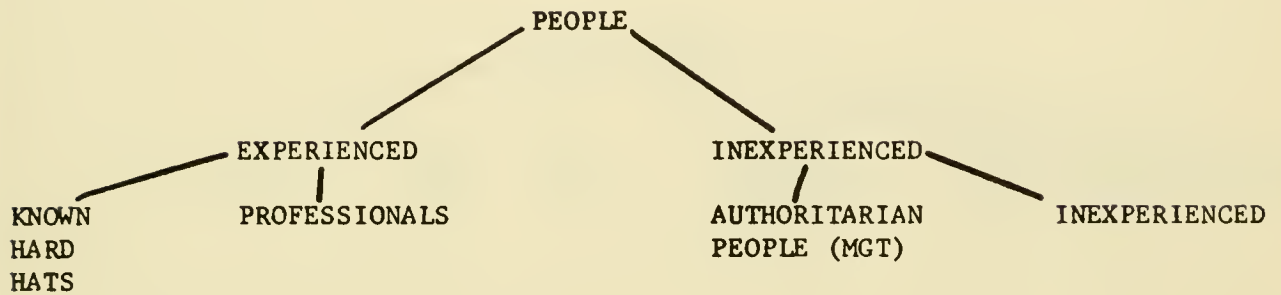


FIGURE I

LABELS FOR PEOPLE IN MEDIATION BASED ON EXPERIENCE



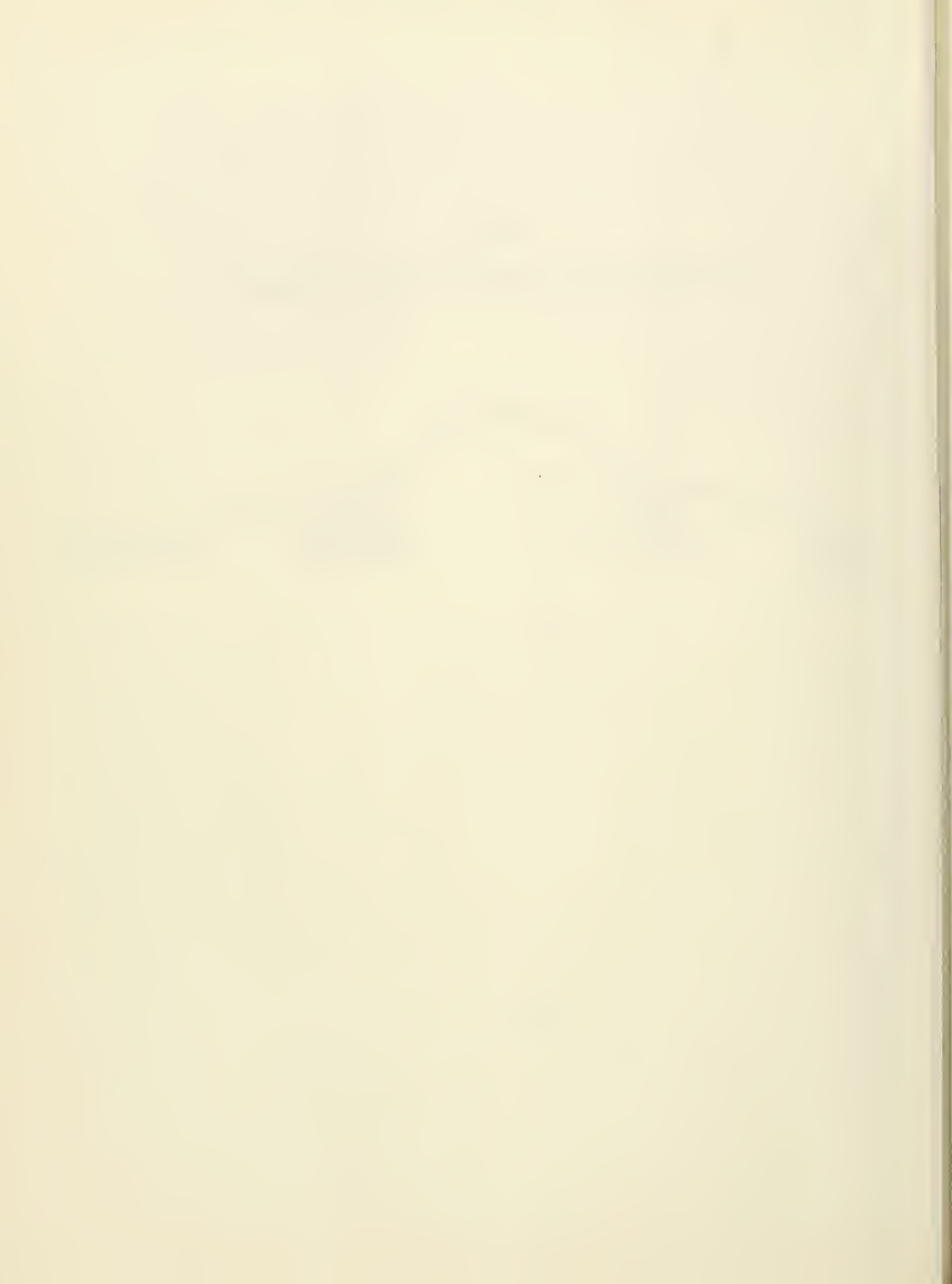
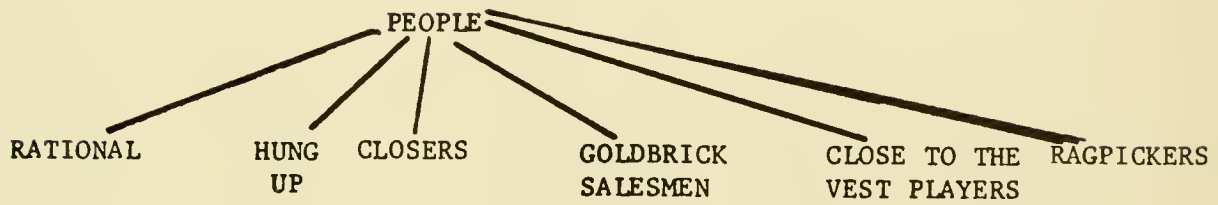


FIGURE II

LABELS FOR PEOPLE IN MEDIATION BASED ON BEHAVIOR



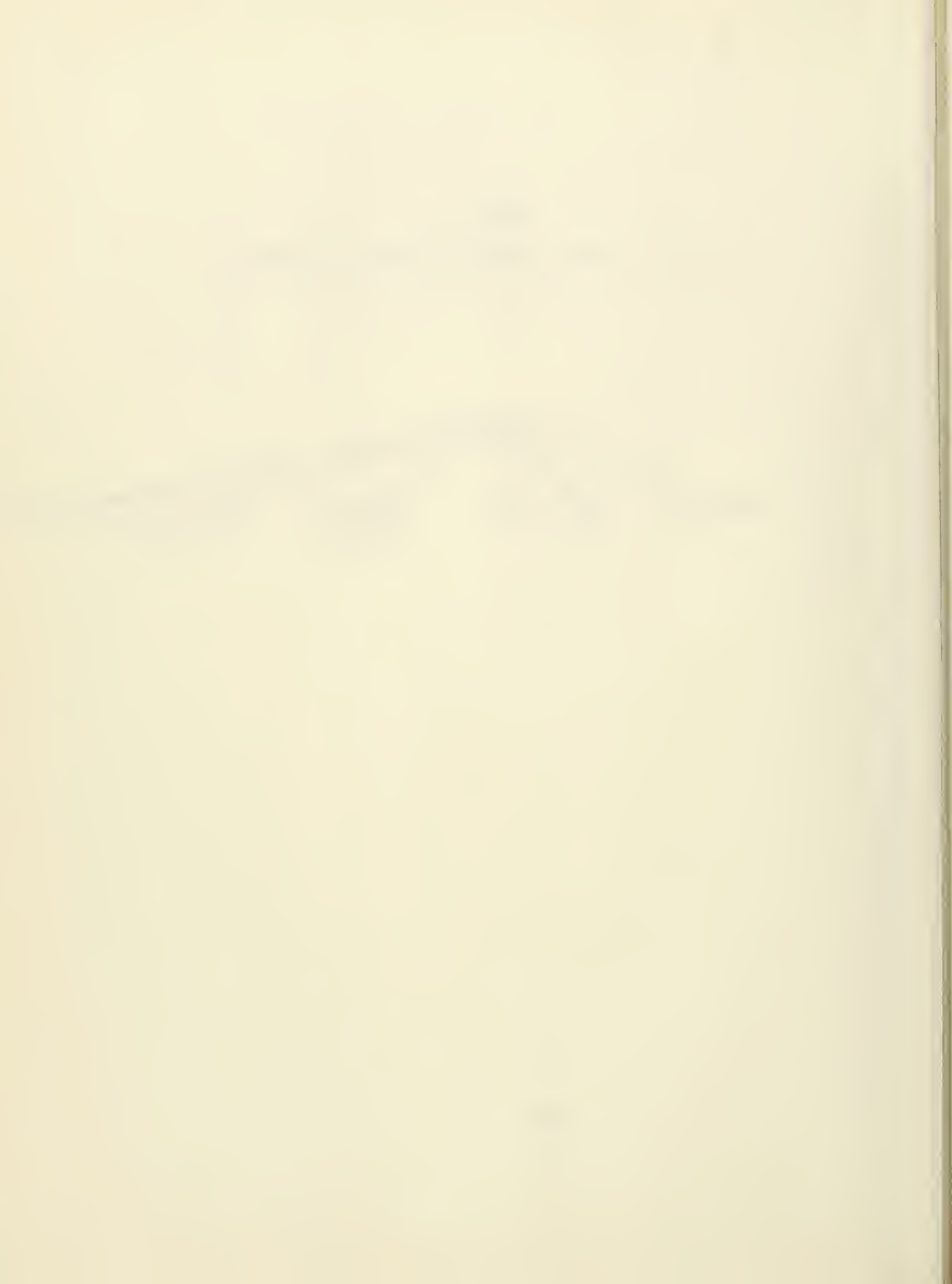
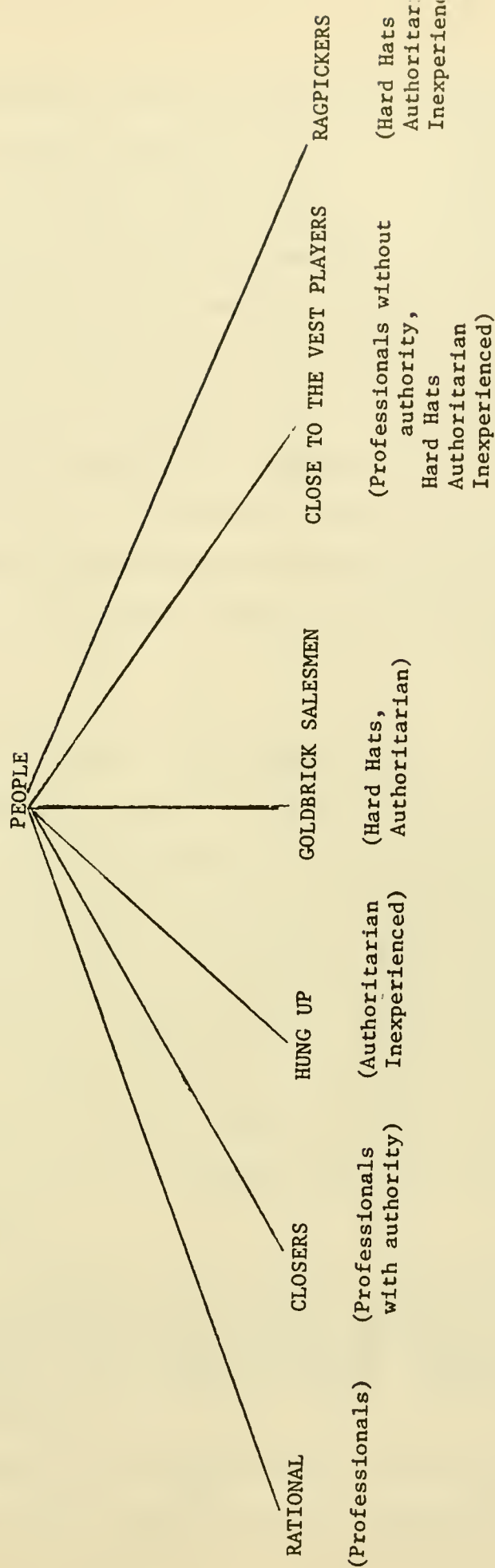
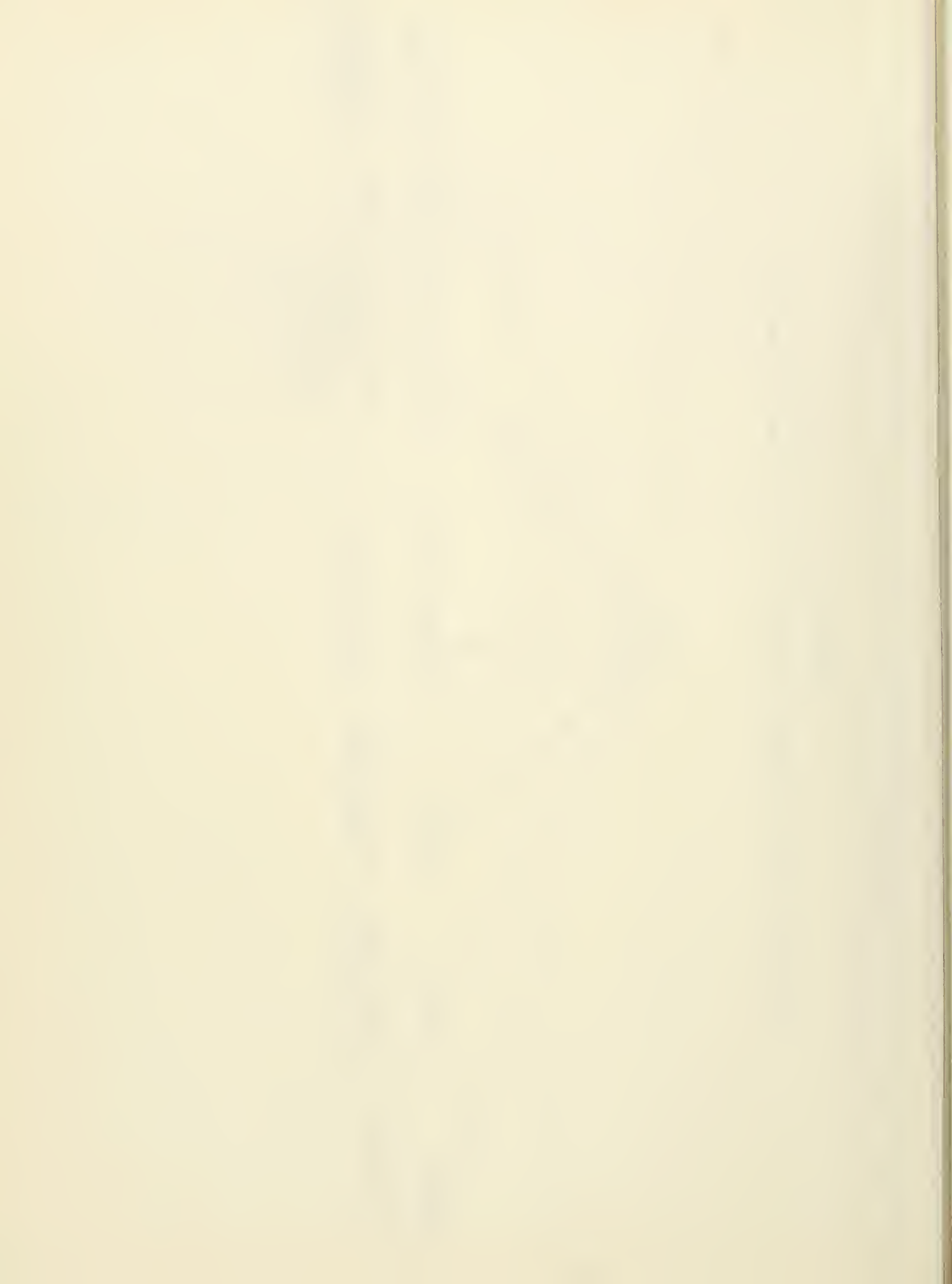


FIGURE III

RELATIONSHIP BETWEEN CATEGORIES OF PEOPLE BASED ON EXPERIENCE AND BEHAVIOR





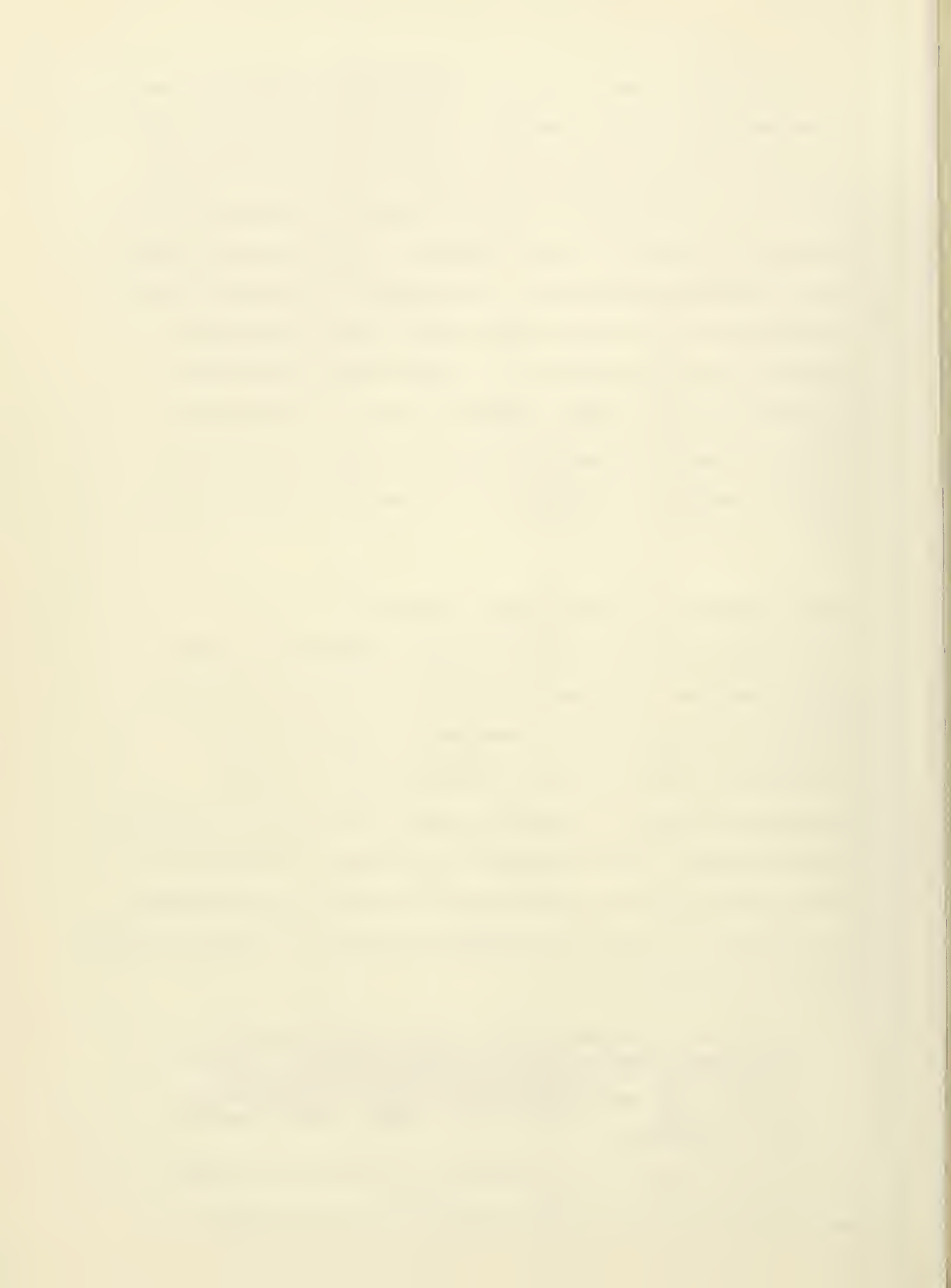
At this early stage in the study, experience and behavior categories are considered two distinct dimensions. In actual practice, this distinction is unlikely. One would expect that the mediator's typology of "people" begins with a classification based on experience of the person and builds on the initial categories as more information about the people's behavior becomes available during the case. Typologies of the variety of people labelled by actors in a social setting tend to be more elaborate and complex than the one portrayed here. (Spradley, 1972 a and 1972 b) Figure III represents an intial attempt to relate the experience and behavioral categories by indicating which type of person, in terms of experience, manifests the different types of specific behaviors in the case.

III.C.1. Categories of People based on Experience

a. Professional as a type of person was mentioned by all the mediators interview Professionals are either attorneys, industrial relations or personnel people for management or experienced union representatives who have had alot of experience with collective bargaining and mediation. Professionals are "sophisticated and know the rules of the game." When professionals are involved in the case, the mediator expects that he can work through the problem solving procedure and this process will lead to a "sensible discussion of the issues" that will result in a compromise.

In each case, management and the union are represented by experienced spokesmen who have complete authority. Each knows he can say yes. We can have a sensible prediscussion of outcomes. They know the bounds and limits. They know we'll get a compromise. It will be a fair shake, midway between the parties' positions.

The mere presence of a professional in a case does not insure that the mediator can be a problem solver in the case and expect



a compromise settlement. This depends, among other factors, on whether the professional is really in charge of negotiations for the party; whether he has the authority to bargain and make commitments for his side. In some cases, the union and/or the management side will retain the services of a professional, but will not take him into their confidence about their true plans or if they do take him into their confidence will not allow him to go off the record with the mediator nor will they give him the authority to compromise. In these situations, the effect of having a professional present is diluted. Mediators try, early in the case, to determine whether the professional has the authority to compromise and close a case. Professionals are therefore, to be distinguished between those who have authority and those who do not. (See Table 1 which summarizes the expected behaviors in terms of the problem solving procedure for categories of people based on experience.)

1) Definition of the Issues

When professionals are negotiating, the mediator expects that the issues will be crystallized, that is, each side will have a clear position and know pretty much what they want. The mediators expect that the professionals have worked separately with their respective committees to generate realistic demands, realistic in the sense that they can be achieved. The mediator also expects that in negotiations prior to mediation, the parties guided by these professionals have sifted out and reached agreement on many of the issues such that they require only additional assistance on some of the tougher issues.

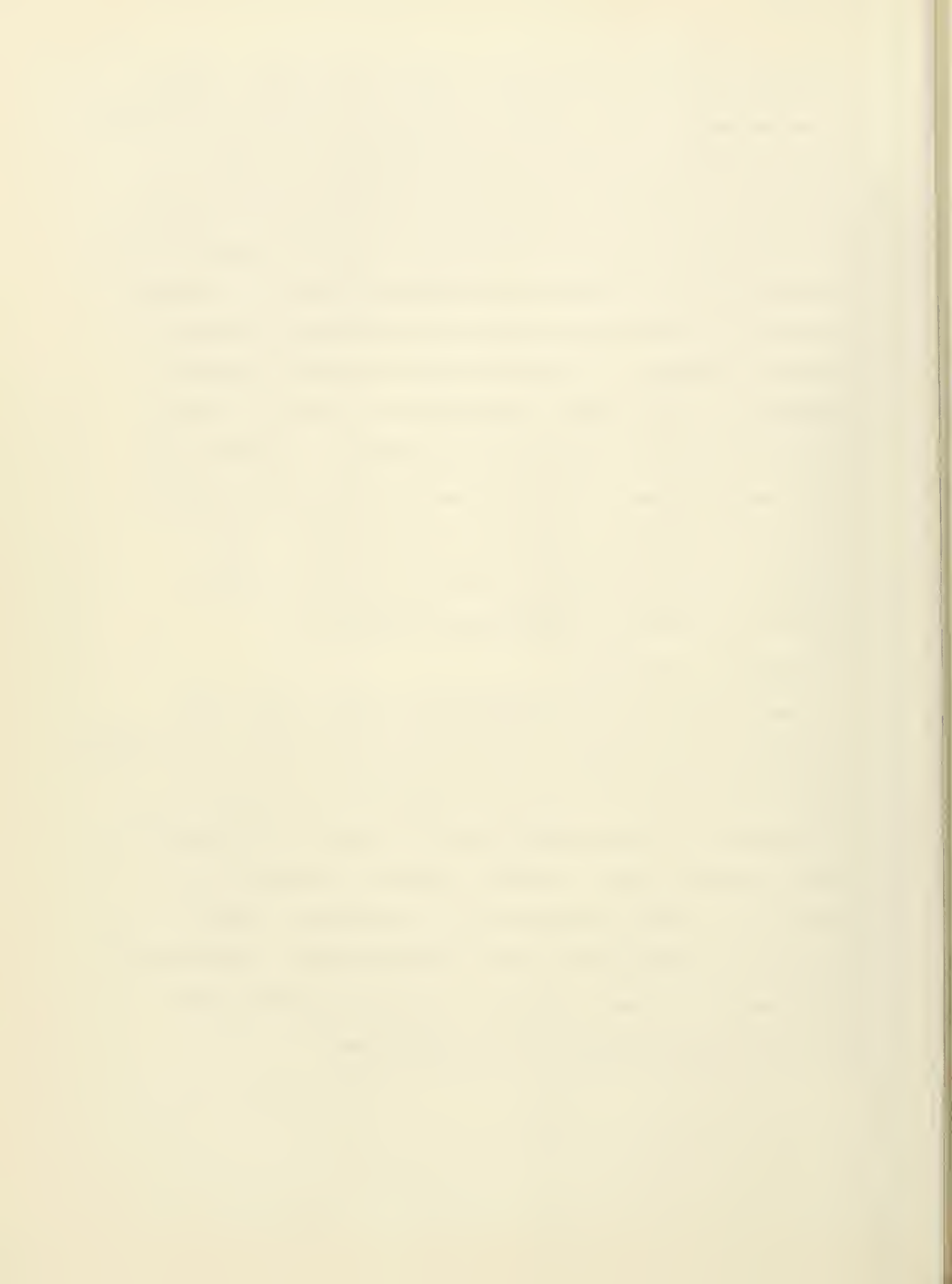
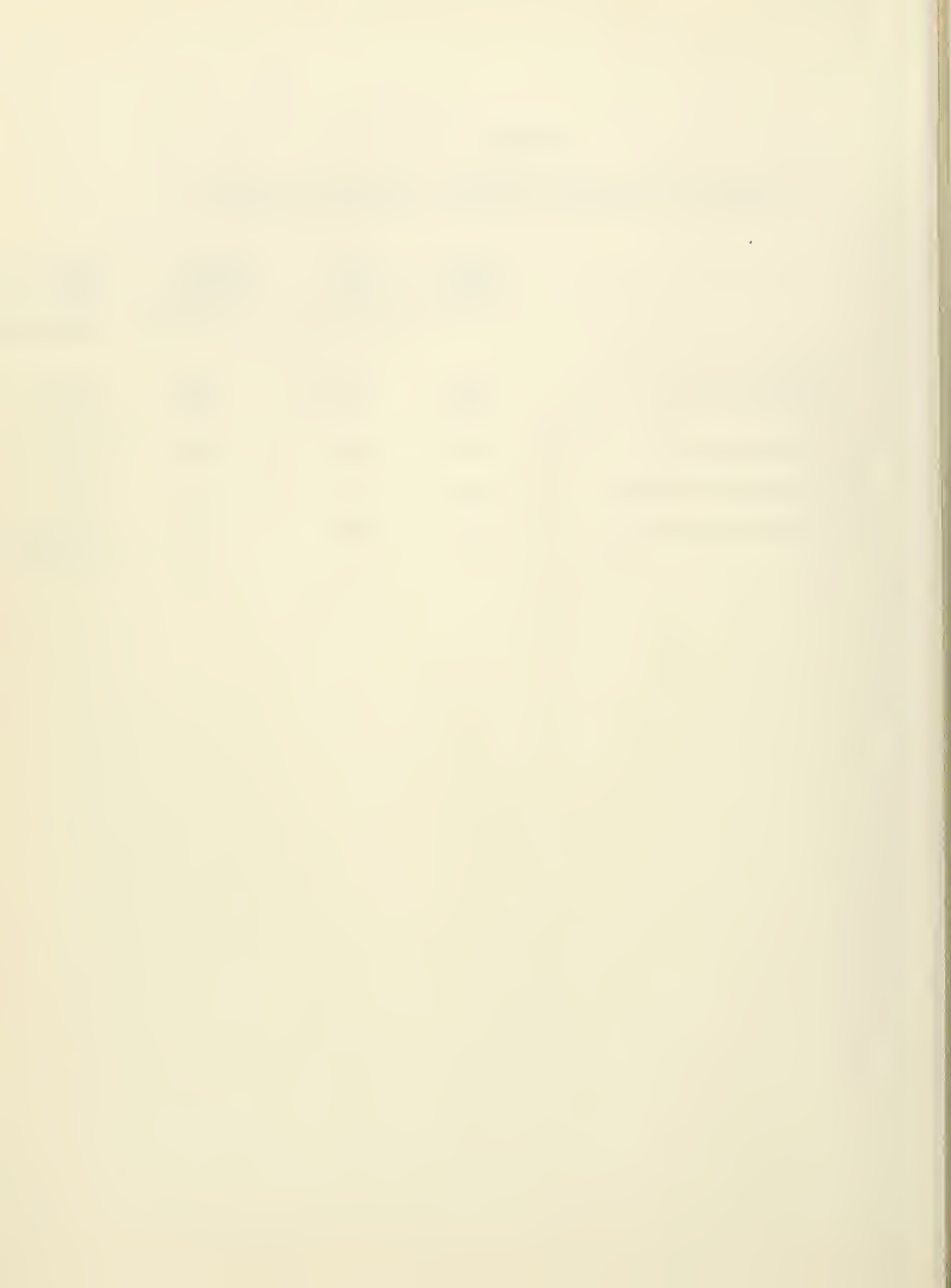


TABLE I

BEHAVIORAL EXPECTATIONS FOR DIFFERENT TYPES OF PEOPLE BASED ON
ELEMENTS OF MEDIATION PROCEDURE: EXPERIENCE CATEGORIES

	EXPECT ISSUES DEFINED	EXPECT SHARING OF INFORMATION	EXPECT SENSIBLE DISCUSSION	EXPECT FLEXIBILITY FOR COMPROMISE
1. Professionals:				
With Authority	yes	yes	yes	yes
Without Authority	yes	yes/no	yes	unclear
2. Known Hard Hats	yes	no	no	no
3. Authoritarian People	yes	no	no	no
4. Inexperienced People	no	no	no	yes (w/con- vincing)



2) Sharing Information

Since professionals are, by definition, experienced in mediation, they know that they have to be open with the mediator and tell him what they really want.

They know they can't bargain with you. They know they have to reveal their true position. If the mediator knows the true position, he has something to work with.

Professionals understand this. The mediators don't expect the professionals to bargain with them, but rather expect that they will tell him, overtly or by signalling in some way, the true position or something close to it. Often this true position is given off the record, where everything discussed is confidential and non binding. Where professionals are present but are not acting as spokesmen, i.e., their authority is constrained, this open sharing of information may not occur.

3) Discussion of alternatives.

Professionals are not usually part of the local bargaining teams but rather brought in from a law firm or International office and therefore mediators don't expect them to have an emotional attachment to the issues or the outcome. The mediators feel that these professionals are removed enough from the content of the issues to discuss the issues, the suggestions and implications on their merit. Mediators expect professionals to be "rational" (See below), to have no emotional outbursts but instead they expect a sensible discussion of issues. In these discussions the mediator can make suggestions and know that the implications will be thought through and explored. Where a suggested package can be tentatively accepted, the strategies for convincing the rest of the committee and the constituencies can be discussed.



4) Flexibility for Compromise

The mediator expects flexibility for compromise from the professionals because they understand that compromise is the essence of mediation. In the case of professionals, the mediators emphasized that for compromise to occur, the professionals had to have the authority to seriously bargain, to say yes or not. And this may not always be the case.

The authority for compromise may be vested in another member or members of the bargaining committee, not the spokesman. In this situation, the mediators see their role as trying to convince the committee of the soundness of the package working with the professional in this endeavor.

I don't know how other mediators see it but if you have professionals negotiating, they're an extension of the mediator. They help me convince the committee of my logic. If they're fighting me also, it's impossible.

If the professional has the authority to bargain or if the authority is vested in other members of the bargaining committee, then the authority for compromise and hence the potential flexibility is vested in at least some person(s) who are directly at the table.

There are other situations where none of the participants at the table have the authority to compromise. This is because the hierarchy of the organization, the company, town or union takes a position that is non-negotiable. Mediators refer to this as an "institutional hangup". In these situations, the spokesman or for that matter the committee have little ground on which to bargain or mediate. So, although there can be meaningful discussion of the issues, the flexibility for compromise will not be there.



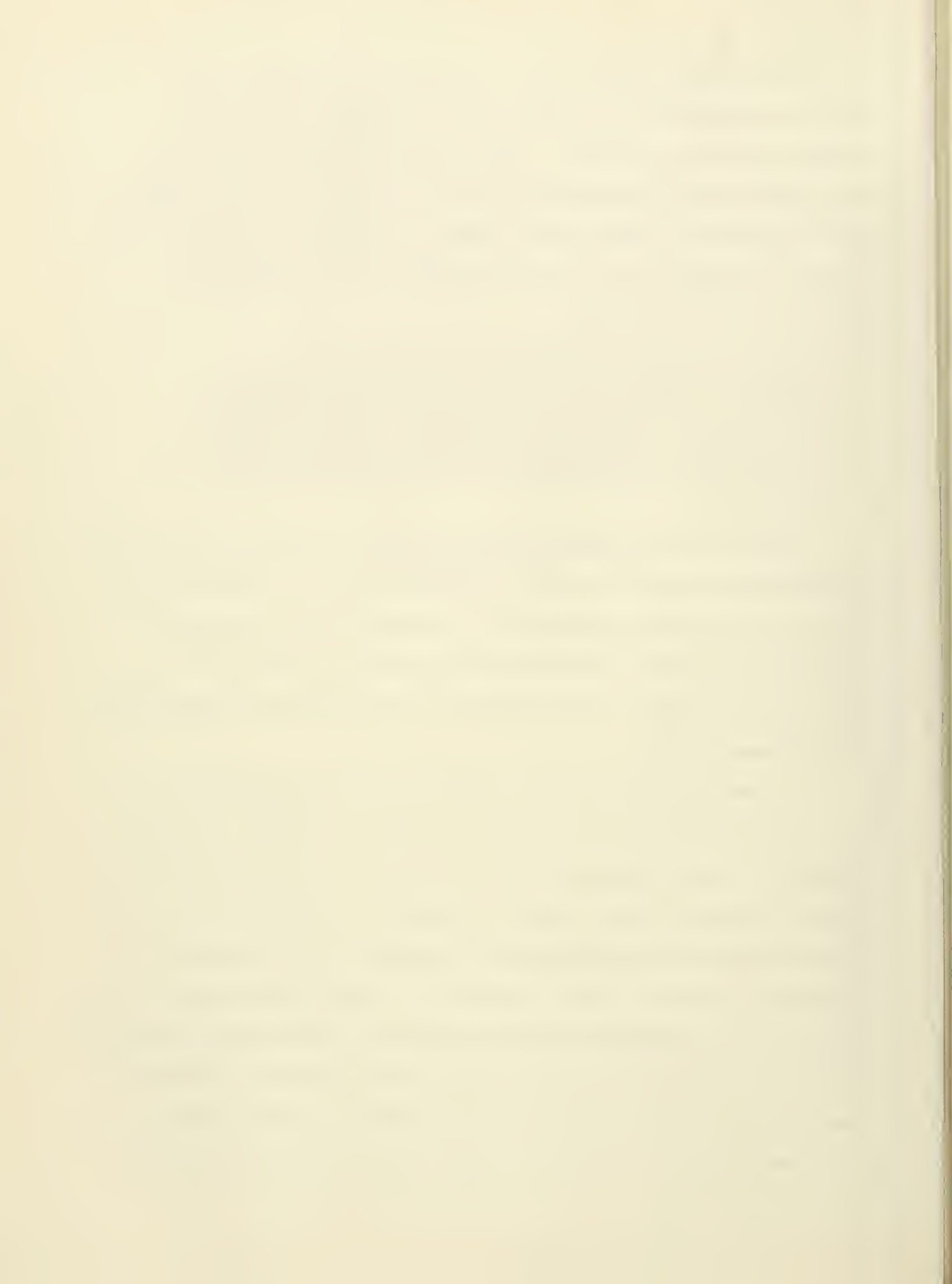
When mediators are working with professional spokesmen, they expect an open sharing of information and a meaningful discussion of possible options and tradeoffs. If the professional has the authority to compromise, then a settlement is likely. If that authority is lacking as in the case of an "institutional hangup", the mediator still feels that a service has been rendered because the nature of the constraint has been fully and openly explored.

The company guy put together all he could but the corporate structure is such that local recommendations have little effect. The powers that be take a firm position and as a result there is no flexibility, no possibility for accommodation...The service the mediator provided was that the last word has been said. We did the challenges, reviews and suggestions. The exploration may be helpful in terms of a settlement.

Mediators prefer working with professionals. When professionals are representing the parties in a case, the mediators try to determine whether they have the decisionmaking authority to bargain because authority to bargain is the critical variable when professionals are involved. If they have that authority, then according to the mediators, the likelihood of settlement is high.

B. Known Hard Hats hired by Authoritarian, Paternalistic People

There is another type of person, who though experienced in labor relations is quite different from the professional. This is the "Hard Hat for Management". These people, as described by mediators, are usually management attorneys, "hired by management for their expertise in keeping unions out." These "hard hats" are usually brought into negotiations and mediations by an "authoritarian or paternalistic management." This type of management does not accept the basic premises of collective bargaining as a means to achieve industrial peace; they don't want to share decisionmaking over any area of work with the union. Their view as



described by a mediator is "I am the boss, who are they to tell me? This union has settled with everybody and they'll settle with me." As a result authoritarian people refuse to accept the premises of give and take associated with mediation. These "authoritarian" types will often hire "known hard hats" to represent them at the bargaining table because they are required by law to negotiate.

1) Definition of the Issues

The mediator has clear expectations about the behavior of these "known hard hats" representing authoritarian management. The positions on the issues will be clearly defined. What wants what will be apparent because the position will often be little or no wage increase and either no new demands met or retrenching from the last contract. Of course, these kinds of positions are often bargaining strategies used in the early stages of mediation, but both parties know it is just part of the ritual. In cases with known hard hats and authoritarian management, it is really the position.

2) Sharing Information

These types of people do not accept mediation and therefore make little or no attempt to share any information with the mediator or work with him to develop a package.

3) and 4) Discussion of the Issues and Flexibility for Compromise

There is no flexibility for compromise in this situation. Management will refuse to budge and even to take the procedure seriously. One mediator described such a case with an authoritarian management where the head of the school committee played cards during the caucuses.

These mediations involving known hard hats representing authoritarian



management are exceedingly difficult for mediators. Known hard hats and authoritarian management have an attitude, and adopt intransigent positions that are incompatible with the flexibility and willingness to compromise seen as necessary by the mediators. Often this negative attitude results in a poor, highly conflicted relationship between the parties which further complicates the process. In order to mediate in these situations, to be a problem solver on the issues, the mediators need to jar or unfreeze the parties to get the process going.

Hard hats are a label usually associated with only management, not unions. A hard hat stance means that party is sticking to the status quo, not budging. Usually in collective bargaining, the union is the "moving party", they present demands for changing the contract; they want to change the status quo.²

c. Inexperienced People

Inexperienced people are chief negotiators for either side who have not been through negotiations of mediation before. This can occur when parties negotiate for the first time or when the leadership (of the union or management negotiating committee) has changed hands. It also occurs when the committee has a professional attorney but he is given no authority. Rather the reins are held by other members of the bargaining committee. Mediators feel that this lack of experience in collective bargaining makes the process of mediation more difficult. The mediator becomes involved in a teaching or handholding type of case trying to settle the case, at the same time, attempting to educate the parties about the realities and procedures of collective bargaining.

1.) Defining the Issues.

Inexperienced negotiators have unrealistic expectations about what they can achieve in mediation; they seem to feel that if they ask for



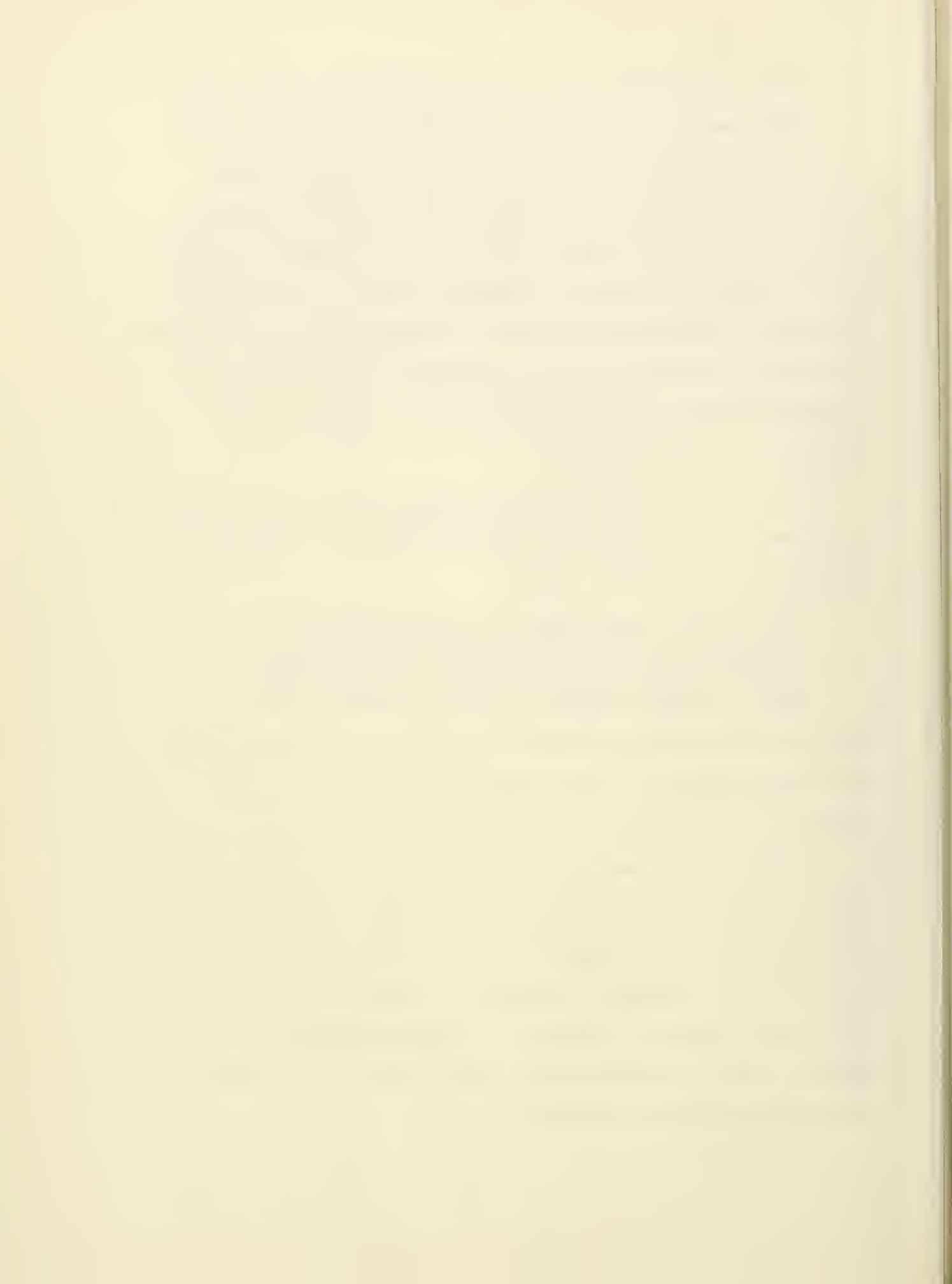
for something, they'll get it. Their lists of demands reflect this. The demands made by the union always, reflect, in some way, the pet issues of particular interest groups in the membership . Union leadership is elected, and therefore politically cannot afford to alienate these interest groups. Thus the list of demands at the start of negotiations may be long and diverse to reflect these different iinterests. But through the course of negotiations, prior to mediation, experienced negotiators are able to drop many of these pet issues. Inexperienced people do not. The list of outstanding issues in mediation is, thus, very long.

The formulation of demands also reflects these people's inexperience. One mediator gave an interesting description of how an inexperienced leadership formulated their demands.

It's a lack of sophistication. I asked them where on earth they got it. Well they looked at 20 different contracts and sent a questionnaire to their membership on which of the provisions they wanted. They got 120 items. You can't convince the school committee on that.

The long lists of demands generated by the inexperienced negotiators means that defining the issues in dispute is a long and tedious process for the mediator.

The negotiators are often not clear in their own minds about what they really want. They also characteristically change their minds about what their demands really are. This can lead to a great deal of misunderstanding about positions. Defining the nature of the issues in dispute is therefore, an ongoing process where the mediator tries to clarify in his own mind as well as in the minds of the negotiators what the issues are.³



2) and 3) Sharing Information and Discussion of Alternatives

Working with the parties to define their priorities, to find out what they really want, is also very difficult with inexperienced people. In the first instance, inexperienced people want everything. They expect to achieve all their demands. Many of the demands are judged by the mediator to be unrealistic (expecting very high wage increase, or in the case of management, very low ones). The demands are unrealistic, according to the mediators, because the negotiators lack the experience and familiarity with the broad arena of collective bargaining.

The fact, mentioned by several mediators, that inexperienced negotiators keep changing their minds about what they want makes defining the priorities a difficult task.

The bargaining committee turns over every year and new young people keep coming in. They didn't know where they were. They would change their minds every two weeks. The ordering of priorities would shift. I would say you can have this or this and they would say we want both.

With these inexperienced negotiators, the mediators don't expect "real" or bottom line, as opposed to "table", positions, because in essence the parties' "table" position is the "real" position. What the mediator hears when he asks about their real or bottom line position is usually rhetoric and arguments to support the table position. These inexperienced people have not realistically thought through what they will settle for. In their minds the real position is the same as the table position. The dialogue from an actual mediation illustrates this point.

Mediator: Will you settle for something less, if that something is for 1976? Or does it have to be retroactive to January 1? Or if it's not retroactive, will it have to be more in September?



Union: In 1969, when we struck, they passed it on to the other unions. We want a fair share of the pie. The starting firefighters earn right out of high school, \$9000, while the professional teacher with a BA starts at \$7500.

Mediator: I want a concrete proposal. If you want me to take something back, tell me.

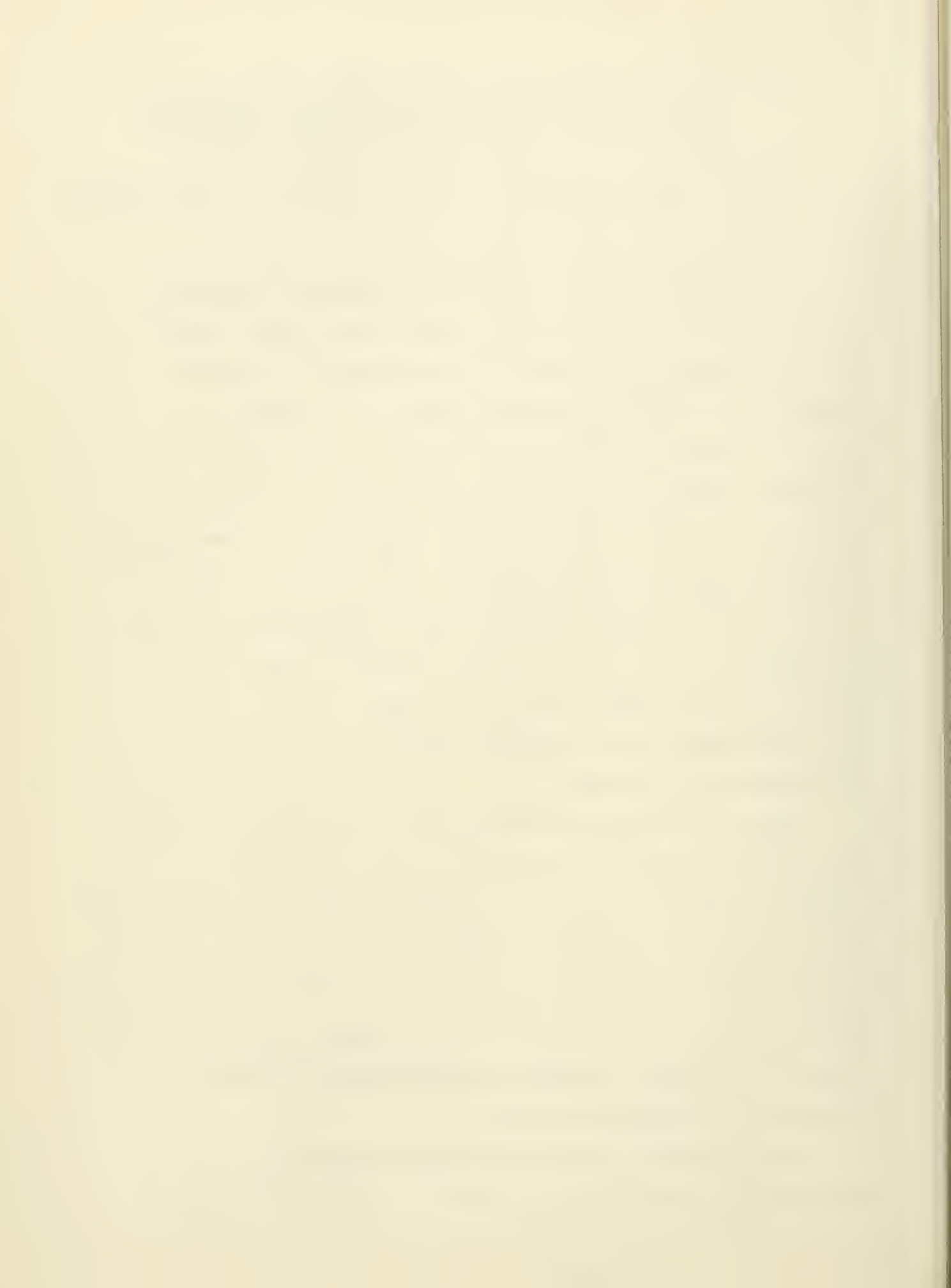
Union: We can't change our initial position.

In this case, the union would not discuss possible alternatives to their demands. They were expecting to get their increase. There was a state representative involved, a professional, but he had no authority to go off the record with the mediator. In terms of the mediator's typology, it was as if the professional was not there. All the work was done with the inexperienced union president while the professional sat silent. This is another characteristic of inexperienced negotiators mentioned by other mediators: they want to be in complete control. They don't understand that allowing a spokesman to go off the record with the mediator gives the mediator needed information so he can start moving the parties toward a settlement. This is true for both inexperienced union and management negotiators.

4) Flexibility for Settlement

There are three major characteristics of inexperienced negotiators that limit their flexibility for settlement. Their high expectations, discussed previously, is foremost. By setting their sights very high, the reality of possible settlements is difficult for them to accept. Several mediators described their efforts to convince their people that this contract wasn't the end of the world, that they would be able to realize more in succeeding contract. The advice one mediator gave was to "Press the pants this time and the suit next".

High expectations are also complicated by the practice of inexperienced negotiators to put their demands on public record, not just



to their membership, but in the general press as well. This tends to lock them into these public positions. Stepping back means losing face, a difficult problem for political figures. One mediator who had not yet met with the union during a mediation commented:

If it's young leadership, it may have gotten out of hand. There's evidence that it is a young leadership because they released their demands to the press. It places them on record. It's harder to compromise.

Inexperienced leadership also have problems controlling the other committee members. This is evident in the long list of demands brought into mediation, but it also occurs at the time of packaging for settlement. To get a settlement, the chief negotiator needs to convince other members of the committee to drop some pet demands. Inexperienced leaders are reluctant to do this because it might jeopardize their position with their constituency. As one mediator said of them, "These guys, they want to be loved by everybody." Thus, when it comes to the point of settling, the mediator is likely to become involved in trying to convince individual committee members to drop their pet demands, a role the chief negotiator should be playing.

With large, inexperienced negotiating teams, where the chief negotiator can't deal with internal demands of the teams, means I have to do it for them.

Cases where one or both of the parties are represented by inexperienced negotiators makes the mediation more difficult for the mediator. Inexperienced people don't really understand how the game is played. They have trouble defining their position on the issues. They don't tend to share information with the mediator and their flexibility to compromise is limited by their high expectations and inability to control their committees. One mediator said of this type of mediation that the "issues were tough enough, but the people made it tougher."



III.C.2. Categories for People in Mediation based on Behavior

During the course of mediation, the spokesmen act in ways that may or may not be different from that expected by the mediator on the basis of the person's experience. Mediators label people's behavior in the case. Usually the label refers to a specific phase of the problem solving procedure as differentiated from the experience labels which cover all aspects of the case. Some of the behavior facilitates the respective phase of the problem solving procedure while others hamper it. Table II summarizes the labels for people's behavior in terms of the requirements for the problem solving procedure.

The typology of people based on behavior is related to that based on experience, but the link at this stage of the research is ambiguous. Certain types of conduct, for example "rationality" and "closing" are most often associated with professionals, though other types of people may be rational. Similarly, "playing close to the vest", a type of behavior that makes mediation more difficult, is often associated with non professionals, i.e., inexperienced people or hard hats. But professionals who are not given authority by their committees to bargain may also "play close to the vest." Although the precise relationship between the labels based on experience and behavior are unclear at this stage, I will indicate the type of person in terms of experience that mediators said were associated with the particular behavior being discussed.

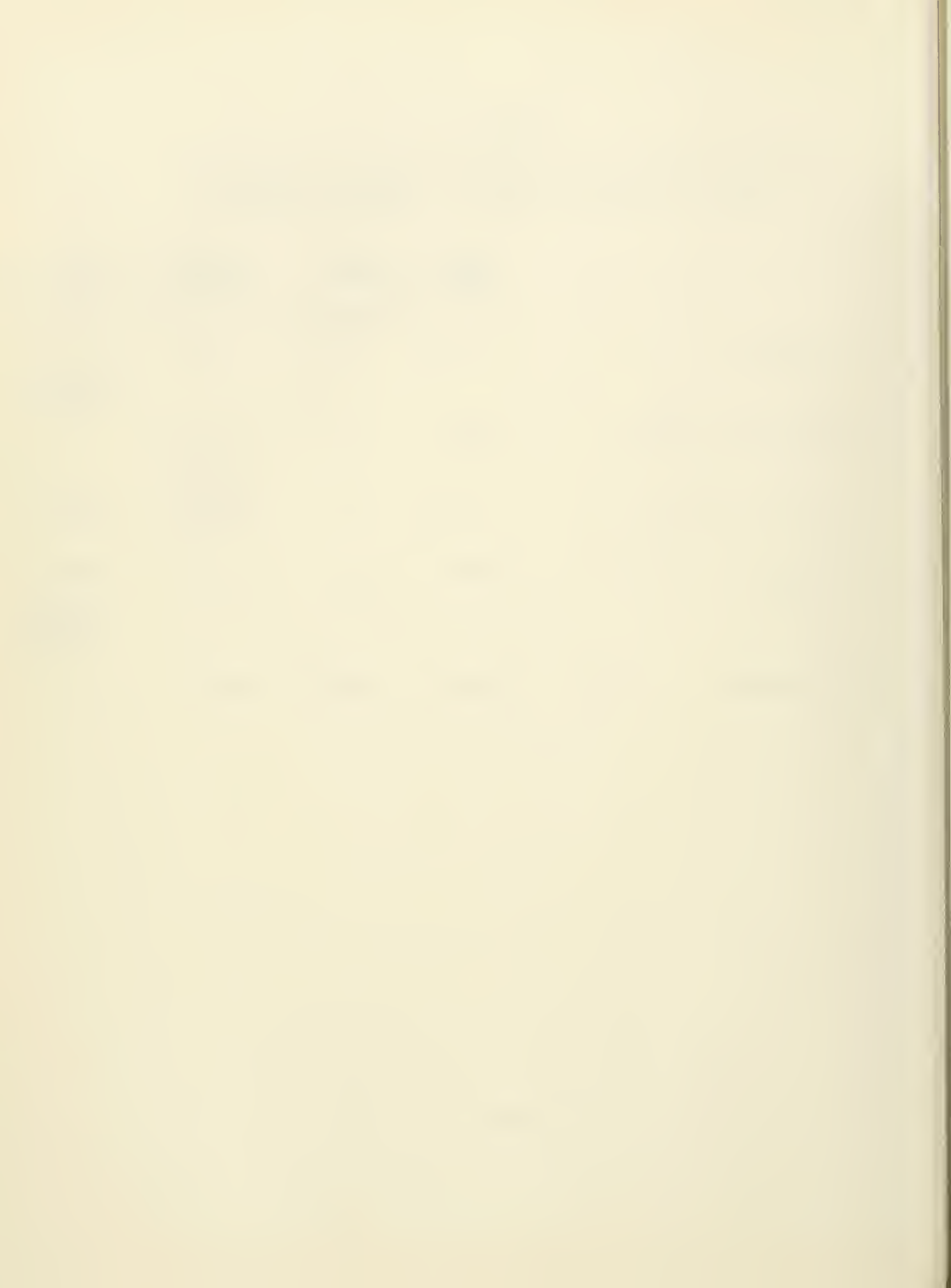
Researchers in the area of labor mediation have been concerned with the strategies that mediators used in mediation. (Kochan, 1976; Kressel, 1972; Stevens, 1965) Stevens' work suggests that the particular strategy a mediator uses in a given situation is a response to a breakdown in earlier stages of the process. Kressel divides mediator strategies into three



TABLE II

BEHAVIORAL EXPECTATIONS FOR DIFFERENT TYPES OF PEOPLE BASED ON
ELEMENTS OF MEDIATION PROCEDURE: BEHAVIORAL CATEGORIES

	EXPECT ISSUES DEFINED	EXPECT SHARING OF INFORMATION	EXPECT SENSIBLE DISCUSSION	EXPECT FLEXIBILITY FOR COMPROMISE
1. Rational	yes	yes	yes	yes (if authority to do it)
2. Emotionally Hung Up	unclear	no	no (irra- tional)	no
3. Goldbrick Salesmen	yes	no	no (de- ception)	unclear
4. Close to Vest Players	unclear	no	no	unclear
5. Closers	yes	yes	yes	yes (with ability to close)
6. Ragpickers	unclear	unclear	unclear	no



types, that are presumably used by mediators at different stages of the mediation. Kochan's model is an attempt to link the various strategies mediators use to a typology of conflict situations that describes a particular case. The interviews with mediators in this study suggest that mediators have strategies to deal with different kinds of people. The types of strategies mediators use is based on the spokesmen's behavior in the case. I will indicate for the different types of behavior, the kinds of strategies, the mediators described "to deal with these kinds of people".

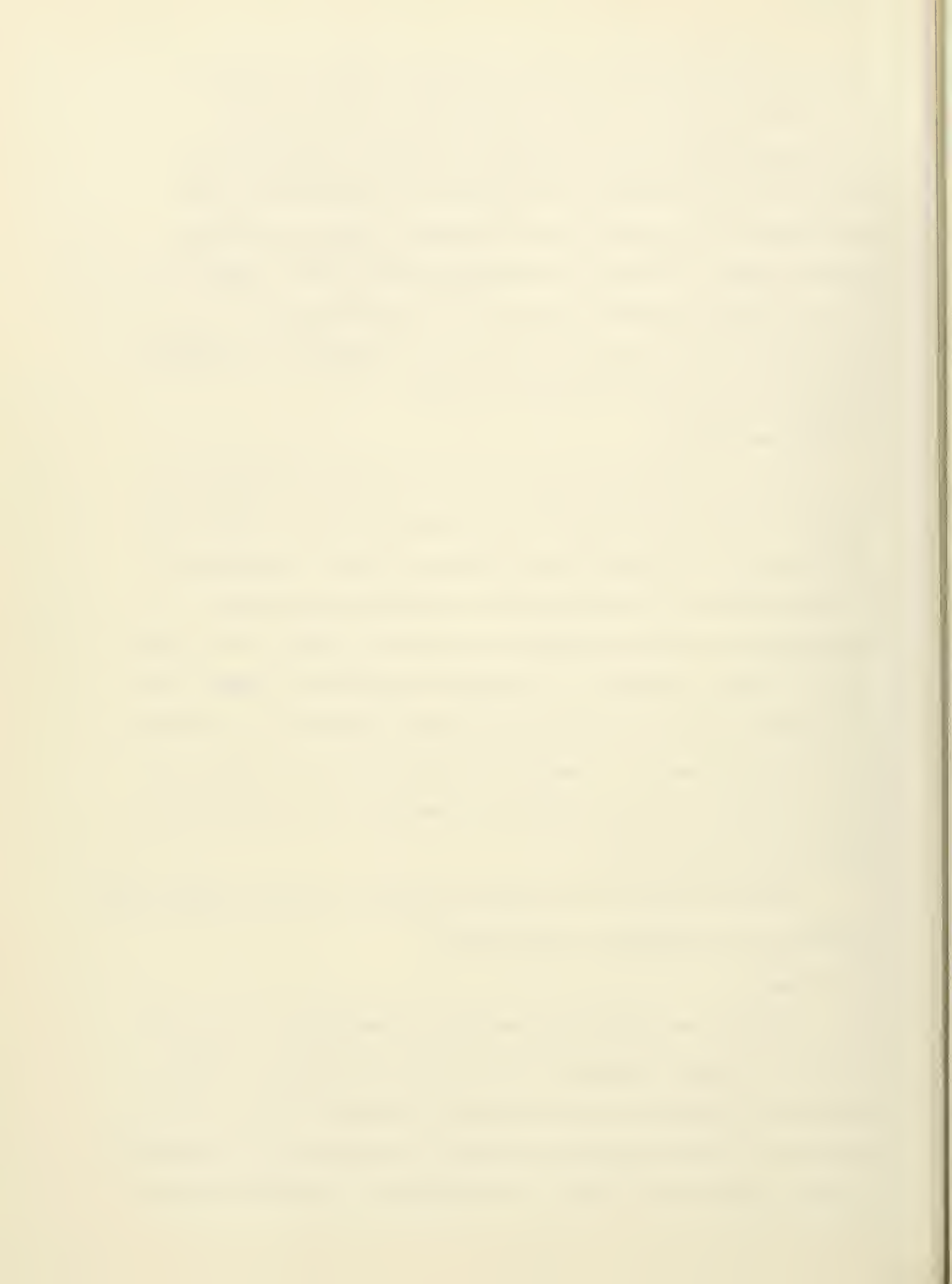
a. Rational People

The use of the word "rational" was consistently mentioned by the mediators. When the mediator labels a person "rational", he means that the person is not emotional about an issue, but rather objectively and openly considers all the possibilities presented by the mediator. If the mediator can create a package that meets their needs, is thus, judged fair, it will be accepted. With "rational" people other "hangups" that would inhibit the full exploration of possible alternatives do not exist. With "rational" people, the mediator can concentrate primarily on the issues, working to generate "creative and innovative solutions for what each side says matters most."

Rational people are most often professionals, but other people can be rational; it all depends on their behavior.

b. Closers

"Closers" are a subgroup of rational professionals, who know how to "close" to reach an agreement. Not all pros are closers. Closing, according to mediators seems to encompass two types of skills. On the one hand, "closers" can read the "signals" the other side is conveying and use that information to fashion counterproposals. One mediator gave an example of this.



Say the union wants 50¢ and 50¢ and management wants 35 and 35. Now management wants to indicate something, so they say 35-35 and 10 in the 18th month. That signals to the union rep that the company may move the 10¢ up or at least put it in the second 6 months. These are signals. Most committees don't recognize the gestures, but the closers do.

Another skill possessed by closers is the ability to come up with different alternatives if the other party refuses to give more in one area. In one case, when the company refused to add any more to the wage package, the union spokesman suggested increasing the pension. The mediator labelled this behavior as "closing".

Closing behavior is most important in the final stages of the problem solving procedure where the mediator requires both desire and ability to compromise. Closers have this ability and are particularly adept at this to such a degree that they can take the initiative for making suggestions for a settlement. Mediators want whenever possible to have the parties themselves fashion their agreement but only with closers can the mediator play a passive role in the final stages and let the closers basically handle it themselves.

c. Emotionally hung up people

Mediators label "emotionally hung up" people as the almost polar opposite of "rational" people. "Hung up" people take a position and stick firmly to it, may even risk a strike, for reasons the mediator feels are unjustified or irrational. There are many "good" reasons, according to mediators, why a party may take a stand and stick to it. When there is no money available, when outside forces constrain the negotiations, where the political position of the union negotiator or public sector management team are in jeopardy, these are judged by the mediator as "rational" reasons for adhering to a position.



When people are emotionally hung up, it is within their power to be flexible and compromise, but they don't. And the reasons they don't are not considered sensible by the mediator. One mediator described the difference between a "rational" person and one who was "emotionally hung up."

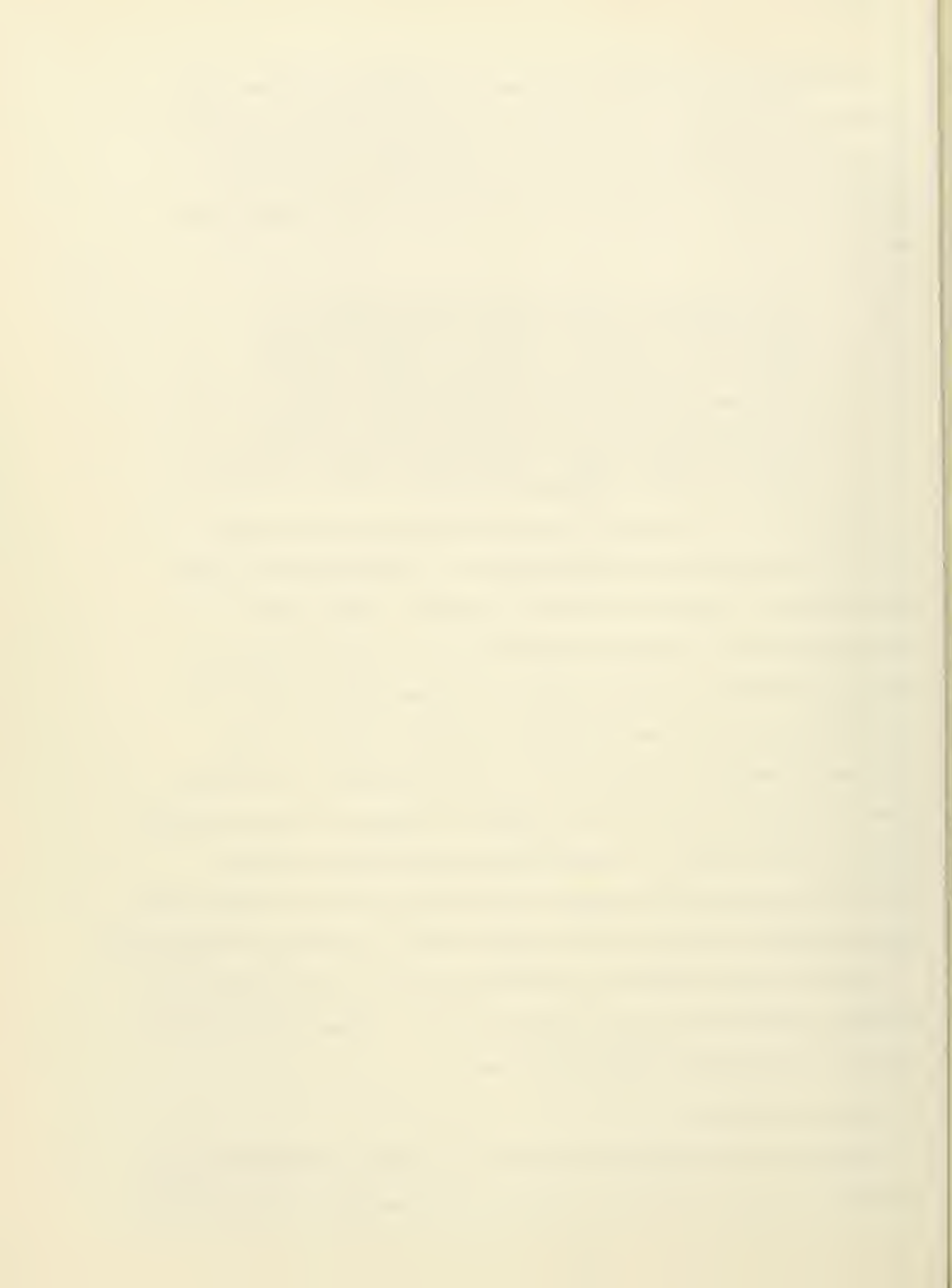
The community had resolved disputes with all unions in the community except one union of 25 people. They (the union) says give us 5¢ more. The mayor says it's impossible, I would have every other union reopening. This is a guy giving you a rational argument. The irrational argument is when the mayor says, I can't give you more because taxes are up and income is down and then goes ahead and gives one group five times as much. It just doesn't make sense. He just doesn't want to give this group more. He's emotionally hung up.

When a person is emotionally hung up, other factors besides the merits of the issues are guiding his behavior. He may have another goal in mind such as "bringing the union to its knees". So where the mediator is trying to resolve the case based on the merits, these hung up people are oblivious to the arguments or packages based on merit. In cases where emotionally hung up people are involved, there is little in the way of sensible discussions nor is the flexibility for settlement present. Mediators described other tactics, for example, involving outside parties to bring pressure, to budge these emotionally hung up people. They also mentioned that when dealing with emotionally hung up people, their behavior deviated from the "normal" mediation role, they defined for themselves.

Hard Hats, Authoritarian and Inexperienced people are usually the ones who behave irrationally or act emotionally hung up. Rarely, if ever, would one expect a professional to behave this way.

d. Goldbrick Salesmen

Mediators are extremely wary of goldbrick salesmen. Goldbrick salesmen are people who are not sincere or open about their position or the information



they share with the mediator. They claim they have nothing to add or they're at the bottom line but they're the kind of people "who can lead you down the garden path." When working with these goldbrick salesmen, the mediator is in the greatest danger of becoming, what Saul Wallen(1974) referred to a "sparrow caught in the badminton game". This metaphor refers to the possibility that the mediator will be used by one or both parties to further their own end.

Goldbrick salesmen present a problem for the mediator both in terms of sharing information and discussion of issues, because the mediator can't rely on what they say. When the mediator gets a position from the goldbrick salesman, it may not be a true one. "You can't believe him when he says it's the final offer." The other side may know that it isn't really final and it damages the credibility of the mediator if he says it is.

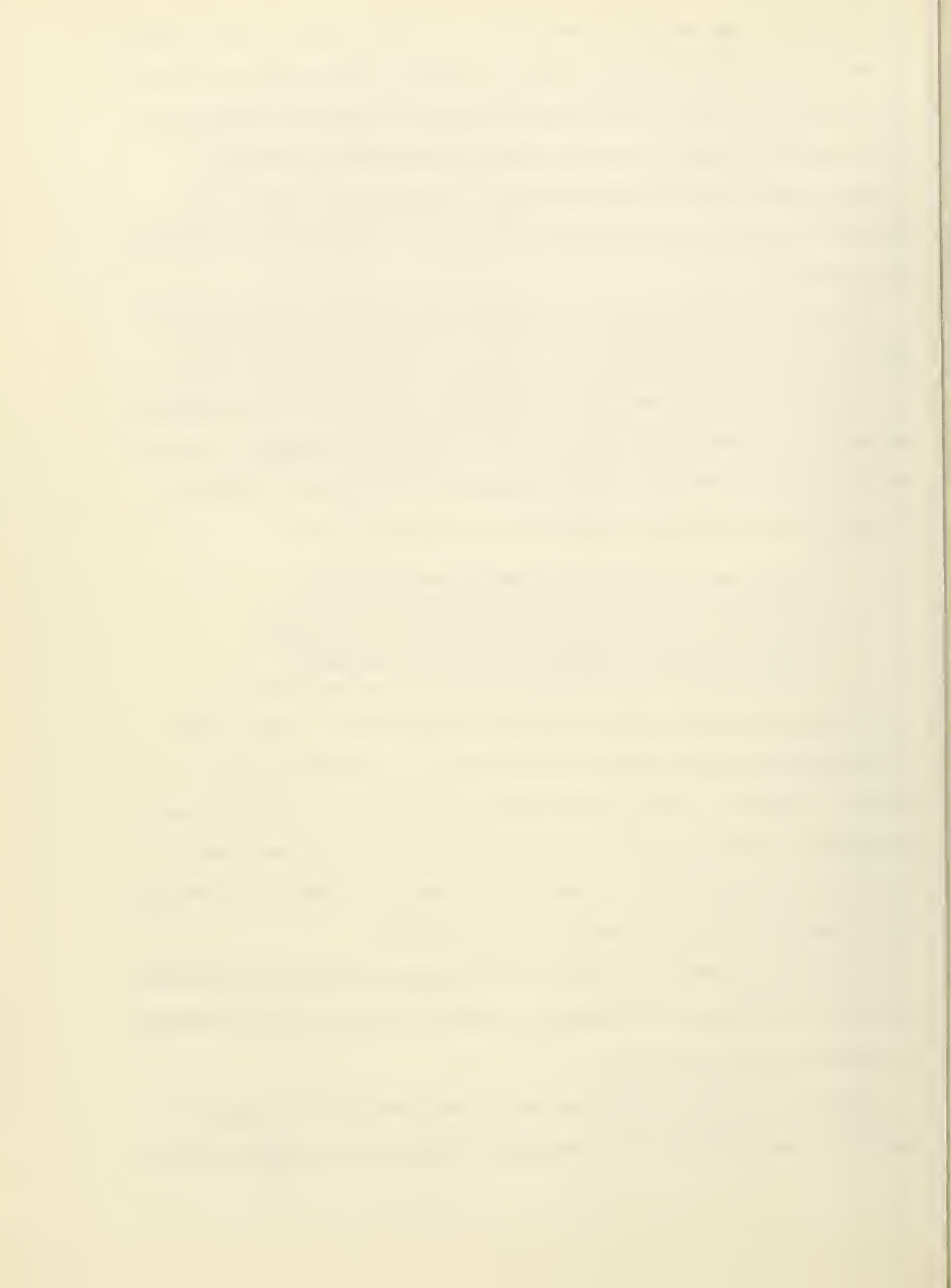
This case that I'm on now, another mediator had it before. The mediator was involved in five issues. He told the union that it was the company's last and final offer. The president of the union commended the mediator for his commitment but not his astuteness. He stated that he could get two of the items and he did.

One reason mediators prefer working with parties on a "steady" basis is that they know who the goldbrick salesmen are. In situations that are new to mediators where a party claims that there is "nothing to add" the mediators explore the history with the other side to find out whether this behavior is typical, ie., a tactic of bargaining or whether circumstances have changed such that there really is nothing to add.

"Goldbrick Salesmen" are rarely professionals, but they are experienced enough to know the rules of the game well enough to use it to their advantage.

e. Close to the Vest Players

"Close to the Vest" players are just as the name implies; they are not open about sharing information. People play close to the vest for a variety



of reasons. Inexperienced people tend to do it because they don't understand the information requirement. Hard Hats may play close to the vest as a tactic. Professionals understand the importance of sharing information with the mediator but in situations where the professional is not given authority to go off the record by the rest of the committee, he may play close to the vest. With close to the vest players, it is hard for the mediator to get the momentum going because the mediator doesn't have any tentative positions; he has not starting point.

It is at the stage of mediation where mediators are trying to get information about priorities and real positions, that mediators label people who are playing close to the vest. Without the sharing of information, the mediators described the difficulty in trying to get a handle on the situation.

When parties are playing close to the vest, you have to do alot of guessing, careful listening and pay attention to the subtle signs. You observe the communications, who's making the decisions, where the obstacles lie.

f. Ragpickers

When the basics of an agreement have been worked out between the parties, "ragpickers" will hold out on what the mediator considers a minor issue and this holding out may jeopardize the total agreement. Ragpicking doesn't usually thwart the actual agreement, it just threatens to. One mediator gave an example.

In a case where the union want an \$85 maximum on sickness benefits and management said a deal only at \$80. The actual difference between the two positions is only 1/10 th of a cent. It's nothing. That's ragpicking.

Ragpicking is a type of behavior usually associated with sophisticated management bargainers who are testing to see how far they can go to save a few cents. But inexperienced people may also act as ragpickers because they don't undersant that holding out for a little bit more threatens to



destroy the agreement on the bigger issues.

The labels mediators use to describe people's behavior in the case reflect the mediator's perception of how different behaviors help or hinder the problem solving process. Closers and rational people help the mediator to "orchestrate" a settlement acceptable to all parties, one they can live with. Emotionally hung up people, goldbrick salesmen, close to the vest players and rag pickers all, for varying reasons, make the reaching of an acceptable settlement more difficult.

IV. Conclusion

To study the strategies of mediators, the ultimate goal of this research, one could view strategies as the response to certain cues in the situation. Cases could be stratified into types of conflict situations based on criteria such as type of issue and the economic and political context and the mediators' strategies(as observed) are then linked to these various conflict types. The problem with this "behaviorist" approach is that the researcher assumes:1) his definition of case types are the same as the mediators' and 2) that mediator strategies can be differentiated by this stratification.

Another approach, the one taken here, closer to the Symbolic Interactionist approach⁴ views mediator strategies as actions that derive from the way the mediator defines and interprets the situation he's in. To understand the mediator's use of strategies in a case, one must first understand how the mediator defines and orders his experience and why it is that he defines it that way in terms of the ends he wants to achieve. The strategies can then be seen as a means to achieve that end.

When mediators were asked about what they liked about mediation, the response was near unanimous. The peaceful resolution of industrial disputes gave them a feeling of accomplishment. To accomplish this end, the mediators

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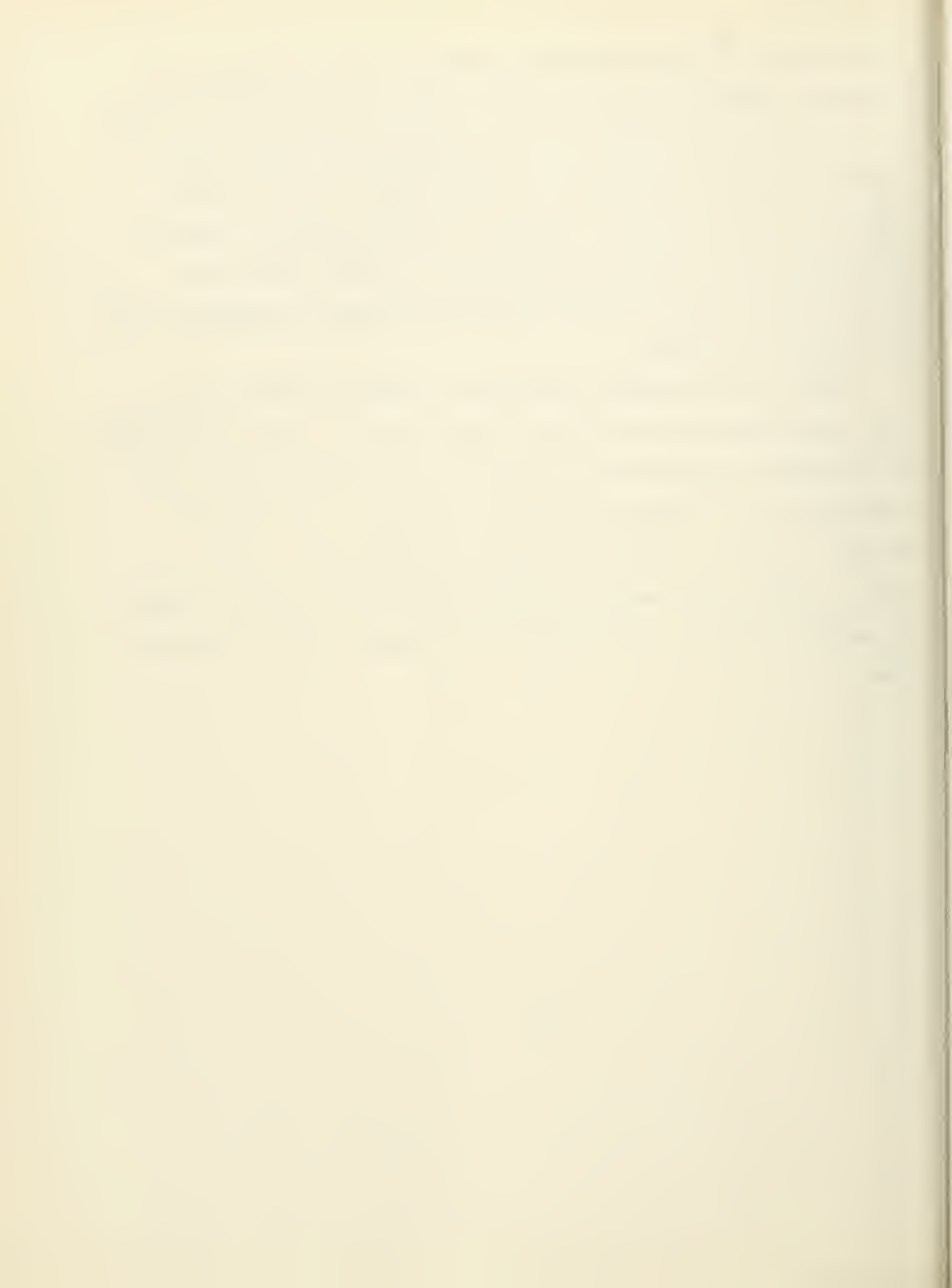
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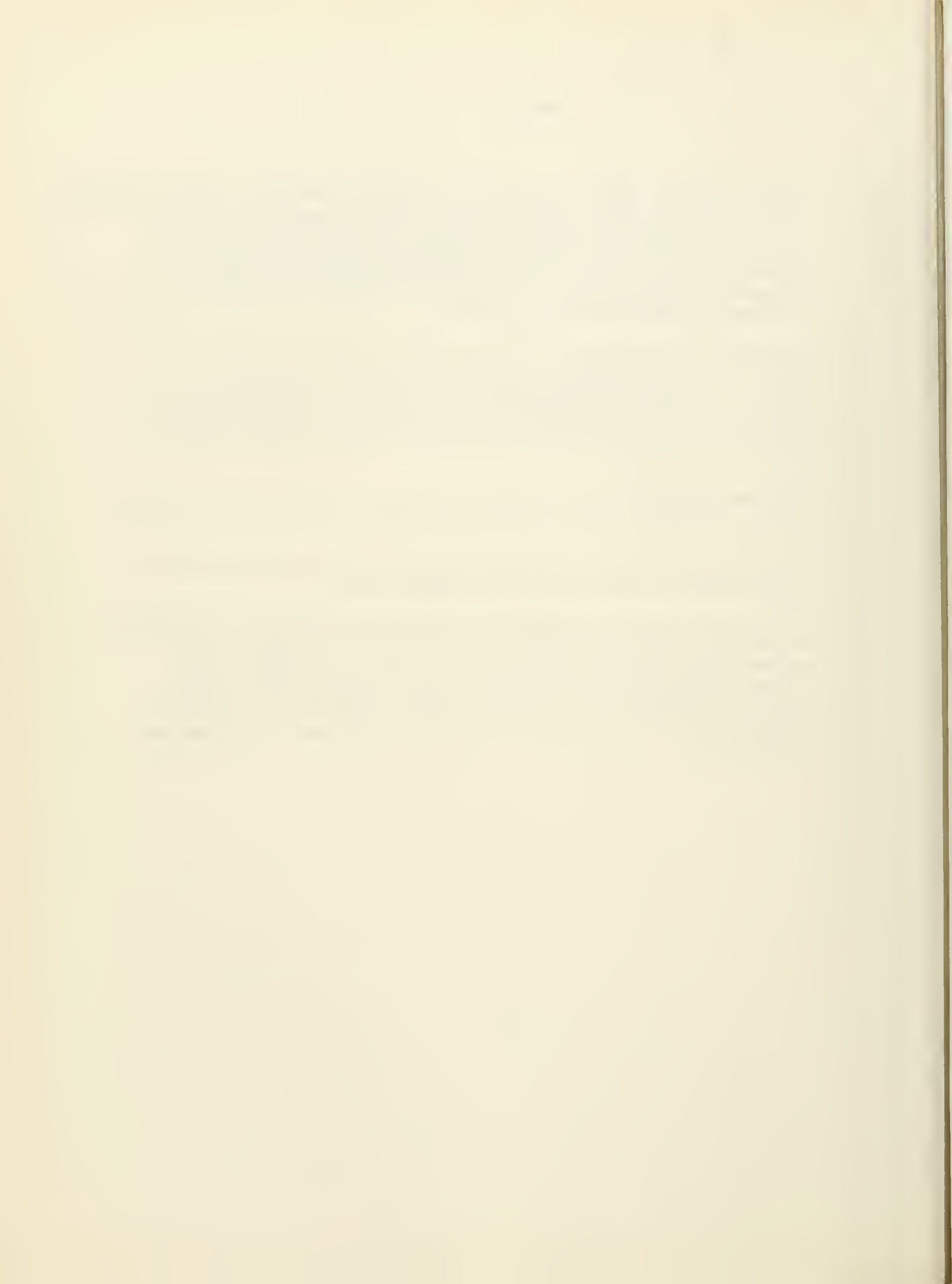
indicated that they enjoyed focusing on difficult issues and coming up with alternatives nobody had thought of before. To do this certain types of behavior on the part of the participants is more facilitating than others, namely a flexible, rational open exploration of possibilities. Where the people involved exhibited this type of behavior, the mediator could feel a sense of accomplishment. Where people played close to the vest or were hung up on something or where they weren't truthful and sincere, succeeding in this goal became more difficult.

People and their behavior in mediation are important aspects of the case that the mediator notes and tries to make sense of. It is by understanding how the mediator makes sense of these people and their behavior that one can understand the use of mediator strategies in mediation.⁵ The mediator's behavior is guided by the kinds of people he is working with. Future research should further amplify the relationship between the kinds of people the mediator encounters in mediation and the strategies they use to deal with them.



NOTES

1. Identifying the labels actors use to describe people in social settings is an important first step in learning the culture of a setting. The naming process for people acquaints the researcher with the actor's language, and if the analyst can learn the basis for the labelling, it can tell him a great deal about what is important to actors in the setting. (See Spradley, 1972; Becker and Geer, 1957; Silverman, 1972; Becker et al, 1961)
2. Probably the counterpart to "Hard Hats" on the union side, in terms of lacking flexibility are the "cause" or radically oriented unions. Mediators mentioned that the presence of this type of union made mediation more difficult for much the same reasons they used to describe hard hats. At present I lack sufficient data to report on this group.
3. This description was most often mentioned in terms of inexperienced union negotiators.
4. For further description of this point of view, see Blumer, (1972), Silverman, 1972, Denzin, 1970 and Goffman, 1959)
5. The focus on people presented here does not eliminate other factors as being important in understanding mediator strategies. The criteria for determining which other factors are important for understanding mediator strategies will be derived as the people focus was, namely by seeing the process through the eyes of the mediator and delineating what he says is important in guiding his strategies.

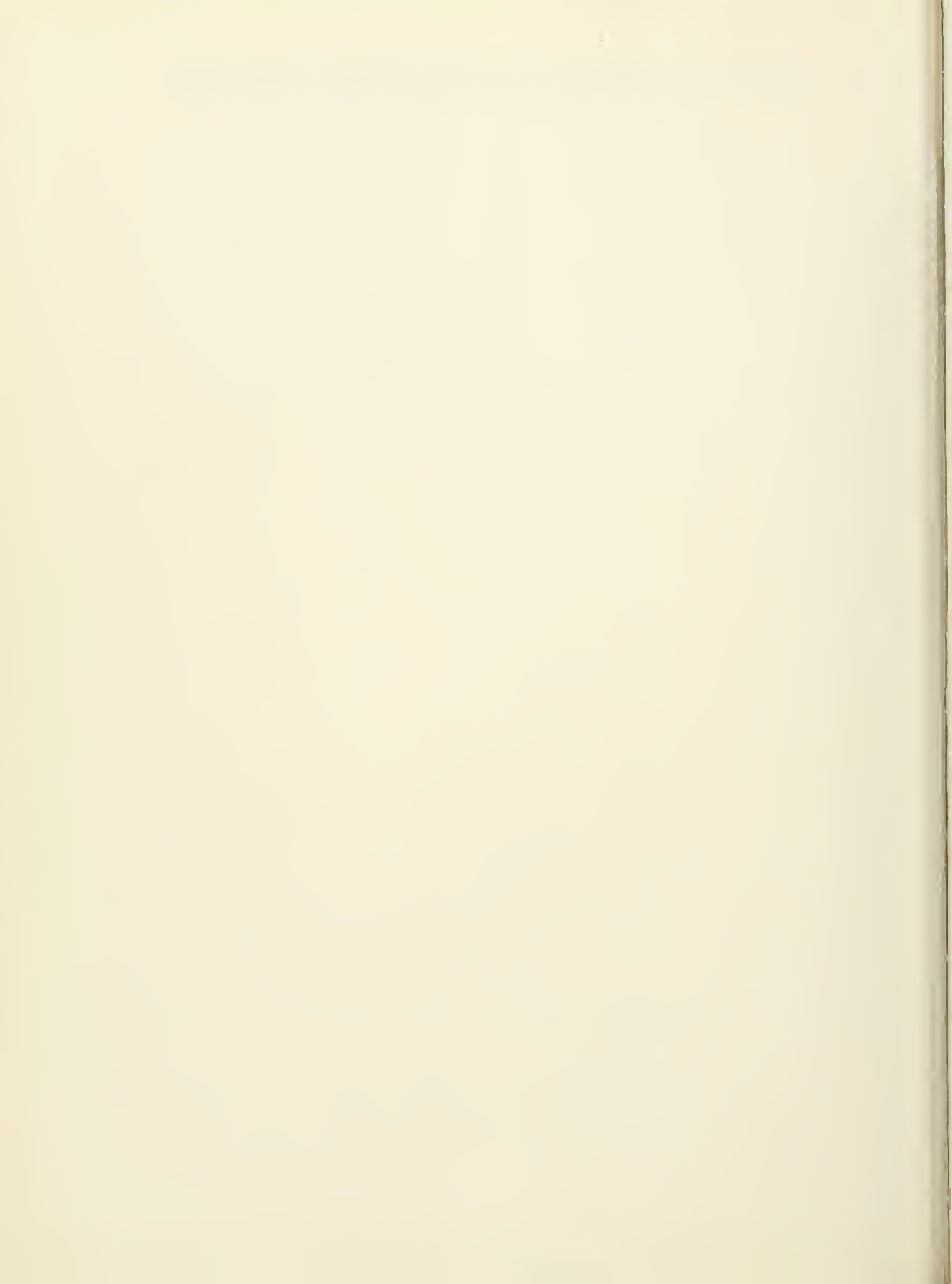


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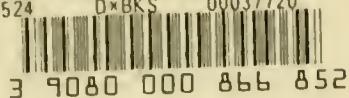
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